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THE GOVERNMENT OF INDIA ACT, 1935

THE
GOVERNMENT OF INDIA ACT,
1935

WITH A COMMENTARY, CRITICAL AND EXPLANATORY

BY

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WITH A FOREWORD

BY

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FOREWORD

To attempt a commentary of a complex statute like the Government of India Act, 1935, before the Federal Court or the Judicial Committee of the Privy Council has had occasion to interpret its provisions and before any constitutional conventions have grown up in its actual working is by no means an easy task. The task is rendered all the more difficult by reason of the fact that the constitution enacted is *sui generis* and finds no exact parallel in known forms of federal constitution even if it be that some of its provisions are modelled on similar provisions in other constitutions. In some respects constitutional purists might even complain that the new scheme of Government does not conform to the accepted principles of a federal constitution. The exigencies of the Indian political situation, the peculiar position accorded to the Indian States in the federal scheme out of regard to their susceptibilities and sentiments, the avowed intention of Parliament to protect and safeguard varied and conflicting interests and the dominating consideration of an Indo-British partnership as the key to the whole scheme of the Indian Government have made the Government of India Act much more detailed and elaborate than the Constitution Acts of self-governing Dominions. In spite of the precautions taken by Parliament and the enactment of detailed provisions in regard to matters which do not ordinarily find a place in an enactment defining the constitutional structure, the way in which the constitution will shape itself will, to a large extent, depend upon the actual working of the different agencies of Government and on the part played by the Federal Court in the future evolution of the constitution. It is common knowledge that in some respects the American and the Dominion Constitutions are not to-day what their original framers intended them to be and that it is but "one of the fictions of juristic philosophy that the Courts do not alter constitutions". "Most of the strength which Hamilton unavailingly sought to endow Congress with in 1787 has been imparted

by Chief Justice Marshall and his successors who have put vitality into a strip of parchment on which the nation was founded." It is well known that notwithstanding the insistence on the doctrine of sovereignty of states by State protagonists and the reservation of the residuary power in the States, the United States Supreme Court by a process of wide interpretation in the early years of its history has enlarged the powers of the Federal Government. The sedulous attempt of the framers of the Canadian Constitution to reduce the States to the position of local governments has not stood in the way of the decisions of the Judicial Committee of the Privy Council placing them in the position of States with wider powers in some respects than even the States of the American Union. In spite of the great care taken by the people who participated in the Convention that preceded the enactment of the Australian Commonwealth to follow the American model, the High Court of Australia has continuously striven to strengthen the centre at the expense of the constituent States, though the Privy Council has, in the few cases that came before it, sought to maintain the balance of the constitution and prevent the encroachment on State rights by the Commonwealth Government. Recent decisions of the Privy Council have illustrated the fluid state of even some of the Dominion Constitutions in spite of their being long at work and reveal how difficult and complicated questions may arise in regard to the constitutionality or otherwise of statutes enacted with a view to promote economic planning, inter-state trade and the regulation of the relations between the employer and the workman.

Mr. N. Rajagopala Aiyangar has done a distinct service by publishing his commentaries on the Government of India Act, 1935, immediately after the Provinces have started to work under the new dispensation and even before the Federal Court has commenced its sittings. At the request of the author I have gone through his notes to some of the important sections before their publication and, in particular, I have had discussions with him on such topics as (1) distribution of legislative powers, (2) the constitutional limitations on the powers of the Provincial and Federal Legislatures, (3) the jurisdiction and powers of the Federal Court, (4) the sections

relating to powers of taxation and similar topics. I can confidently state that the commentaries are not a mere re-production of the discussions in Parliament or a mere extract of the pronouncements of the Secretary of State or the Under-Secretary in regard to the various provisions, but contain a closely reasoned, searching and lucid analysis of the different provisions. They bear the impress of a wide knowledge of constitutional law and legal principles and a comprehensive and accurate study of Dominion Constitutions and the leading decisions of the Privy Council and Dominion Courts bearing on the subject. In the discussion of the Privy Council decisions and of the opinions of the Supreme Court of the United States, the author has not lost sight of the difference between the scheme and the provisions of the Government of India Act and the constitutions of the Dominions or the United States. I can, with confidence, commend the book to the profession which, if critical, is always imbued with a sympathetic appreciation of work well and ably done by its members.

EKAMRA NIVAS,
MYLAPORE, {
9—8—1937

A. KRISHNASWAMI.

No obligation is so difficult of appraisal as the one I am under to Sir Alladi Krishnaswami Aiyar. Not to mention the general intellectual stimulus that close association with a jurist of his eminence has afforded me, I should not have had the courage to undertake a work of this character without his inspiration and constant encouragement. Even more valuable has been his help to me during the actual progress of this work. On several intricate questions of construction, I sought his aid and never once in vain. He spared considerable spells of his heavily pressed time in discussing with me my difficulties, thus helping me to arrive at my own conclusions some of which are embodied in the notes and for which, it is needless to say, I assume the entire responsibility. Besides, I have been the recipient of several marks of his special favour, not by any means the least of them being the readiness with which he undertook to write the foreword and for which I could never be too grateful to him.

N. R.

INTRODUCTION.

When on the last day of 1600 Queen Elizabeth signed the Charter of the East India Company, no one in his wildest dreams could have imagined that she was laying the foundations for the acquisition of a mighty Empire. Trade was the motive which induced the Company to come eastward, but the very trade needed peace and security, so that it might flourish and grow; and when the end of the 17th century saw the decay of the Moghul Empire, the Company emerged in a new role of a conqueror amidst contending and warring factions. Territorial acquisitions were sought, sometimes in self defence, at other times by motives of aggrandisement and by the end of the 18th century it was clear that England would, before long, become the supreme Power in the land. England's loss in America was more than made up by the territorial acquisitions in India.

The constitutional doctrine that all acquisitions of Sovereignty by a subject are and can be only on behalf of the Crown, has ever been part of the law of England, and when after the battle of Plassey the Company found themselves in possession of an Empire, though nominally as delegates of the Moghul Emperor, Parliament intervened with the Regulating Act. But the constitution set up was too artificial to be of any success and personal animosities destroyed whatever chance there was of its working. Pitt's Act of 1784, which followed, established a dual system of control by the Company and a Parliamentary Board which survived till the direct assumption of Sovereignty by the Crown in 1858.

The policy of territorial absorption of which Dalhousie's doctrine of lapse was only a phase continued for a century from Plassey by which time British India nearly reached its present dimensions. The experiences of the mutiny, however, gave a rude shock to that policy and it was discovered that Indian India could be a source of strength for the maintenance of the British Power in India and partly out of motives of self interest and partly out of regard for what was just, the policy of absorption was replaced by a policy of maintaining the Indian States as independent entities.

To start with, the Presidencies were independent of each other, but the Regulating Act termed the Governor of Bengal as the Governor-General of Bengal and made him the supreme head of all the presidencies. At the same time the legislative power in the presidencies was recognised. This state of things was, however, discontinued by the Charter Act of 1833 which concentrated all legislative power in the Governor-General in Council and deprived the local Governments of their power of independent legislation. The grave inconveniences resulting from such a

system led to its reversal in the Indian Councils Act 1861. From then onwards the power of the Provincial Legislatures has always been on the increase, and when under this Act the Provinces have become co-equal units in a Federal system, it is only the culmination of a process started in 1861, the *finale* of a continuous line of evolution.

The Constitution which was set up in 1861 lasted until 1919 when some radical alterations were made in it, particularly in the region of the Provinces. The Councils Acts of 1892 and 1909 created merely consultative bodies to help Government with advice and suggestion and were not by any means designed to lead India towards Responsible Government; and if in effect they have helped in that direction such results were wholly unanticipated.

The first conscious advance in the direction of Responsible Government was the reform of 1919 which introduced dyarchy in the Provinces. "The theory of the reformed constitution" say the Statutory Commission "is that ministers without being answerable for reserved departments or for policy with the reserved side are jointly responsible to the elected legislature in respect of the transferred half of the Government. But it seems to us that it has proved impossible to translate this theory into practice. The intention of Dyarchy was to establish within a definite range responsibility to an elected legislature. In the light of experience, it may be doubted whether the object aimed at could be attained as long as both halves of Government have to present themselves before the same legislature. The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of Government as in the eyes of the legislature, the electorate, and the public".

Provincial Autonomy with the introduction of responsibility in the provincial field; the union of British Indian Provinces with the Rulers of States in a Federation; a measure of responsibility in the Federal Centre as thus constituted; the "safeguards" in the form of special responsibilities and special powers; and the theory of the Indo-British partnership in the realm of trade and of Government;—these are the broad lines of the structure erected by the Act of 1935.

It is in the field of the Provinces that the advance under this Act is striking. The disappearance of the 'official block' and the transference of all departments to ministerial control is no small progress. Of course, the reserve power of the Governors is there, but there is no reason to believe that it would be used to thwart and not to facilitate democratic and parliamentary control.

The reservations of power in the hands of the Governor-General and Governor in the shape of 'discretionary powers' and the special responsibilities are detractions from responsibility and self-Government. Some of them are no doubt based on the inability of the communities to agree and to a demand by certain interests for protection against the power of majorities, but that cannot account for all the safeguards, some of which betoken a measure of suspicion as to the ability of India to

govern herself and of the intentions of this country towards the United Kingdom. Recent statements of the Viceroy and the Secretary of State have assured the public that the special responsibilities would not be lightly invoked and further engender the hope that conventions might, as in the Dominions, grow up rendering their use uncommon if not obsolete. But it has to be noted that in the Dominions the power of the Governor to dissent from the opinion of his ministers was contained in the Instrument of Instructions alone and not embodied in the Constitution, and moreover the very generality of the power together with lack of legislative machinery for implementing that power—such as we have in Ss. 43, 44 and 89 and 90, was a factor which favoured its obsolescence.

The legal basis of the Federation in Canada and Australia is the sovereignty of the United Kingdom over all the Federal Units. While the sovereignty of Parliament over the British Indian Provinces is legally complete, the Indian States are legally sovereign within their territory and though His Majesty may by 'treaty usage or grant' exercise powers and authority therein, the territory is in law foreign territory over which Parliament cannot, as such legislate. This has introduced a complication which is not to be found in the other Federations within the British Empire. The assent of the Ruler is a pre-requisite of the State acceding to the Federation, while in the case of the British Indian Provinces Parliament can enforce their accession. The transformation of the Provinces from their previous position as bodies subordinate to the Government of India, into Units in a Federation with a direct devolution of their powers from Parliament, is an accession to their status, while in the case of the Rulers of States the powers ceded to the Federation to legislate within their States is a derogation from their sovereignty. It is beyond the province of this work to discuss or define the motives which prompted His Majesty's Government to insist on the inclusion of the Princes in the Federation, or the special rights conferred on them; what is more to the purpose is the evaluation of the Federation as an instrument of political growth.

The union of disparate elements—the Provinces of British India with their democratic constitutions and the nominees of the Indian Princes, is certainly incongruous. But the border between Indian and British India is more political than real. Ideas transcend political boundaries. The forces generated in British India are bound to have their reactions and repercussions in the States and this is especially so when both are bound in one single political entity. Common economic interests of state-subjects and the Provinces are bound in the long run to bring about a unity which no amount of discussions and agreements among politicians can help to achieve.

With defence and external affairs as reserved subjects; with the army expenditure and the charged payments accounting for four-fifths of the Federal revenues outside the purview of ministerial and legislative control; central responsibility is vitally limited. In the words of Dr. A. B. Keith "In the Federal Government also the semblance of

responsible government is presented. But the reality is lacking for the powers in defence and external affairs necessarily, as matters stand, given to the Governor-General limit vitally the scope of ministerial activity, and the measure of representation given to the rulers of the Indian States negatives any possibility of even the beginnings of democratic control. It will be a matter of the utmost interest to watch the development of a form of Government so unique; certainly, if it operates successfully, the highest credit will be due to the political capacity of Indian leaders, who have infinitely more serious difficulties to face than had the colonial statesmen who evolved the system of self-government which has now culminated in Dominion status".

The legislatures set up, Federal and Provincial, have plenary powers in the spheres allotted to them; the Federal Legislature is not a delegate of the Imperial Parliament, and the Provincial Legislatures are not delegates of either the Federal Legislature or of Parliament itself. Though in the totality of their power the whole area of self-government may not be included, they are, within the sphere allotted to each, as supreme as Parliament itself.

The competency of the Legislatures, however, is one of strictly enumerated powers. Owing to the controversy that ranged over the subject of the allocation of the residue, the subjects were most exhaustively defined with reference to the Dominion and other constitutions and the decisions thereon, so as practically to leave no residue. But the attempted perfection of the process has led to a certain amount of overlapping. Where the overlapping occurs between the subjects in the concurrent list and in the exclusive lists, there is not much of trouble, as it does not affect the legal competency of the Legislature, but when it occurs between subjects in the two exclusive lists, there is bound to be great difficulty and chance of litigation. For instance, the Provincial legislature is competent to legislate in regard to money lending, which would include all contracts relating to money lending or evidencing a loan of money, entered into by persons within a Province. The Federal Legislature, however, has exclusive power to legislate in regard to Promissory notes and Negotiable Instruments. Ss. 79 and 80 of the Negotiable Instruments Act prescribe that interest as stipulated in a Negotiable Instrument shall be payable and provision is made for recovery of interest at 6 per cent. when the instrument does not specify any rate. Questions would therefore arise about the competency of the Provincial Legislatures to interfere with rates of interest due or payable on Negotiable Instruments under its power to regulate money-lending.

Further, the desire to avoid a general residuary subject, such as "civil rights"—which found a place in the enumeration under the Act of 1919, whether in order to avoid overlapping and the controversies that have attended the interpretation of the words in the British North America Act or to prevent vesting in effect a residuary power in some legislature—whatever be the motive, does again lead to inconvenience. For instance, if it was desired to amend the law relating

to religious or caste usages it is doubtful if the same can be brought under any of the enumerated heads of subjects. Similarly legislation requiring say provision for female members of a Hindu family at the time of partition among the coparceners would seem to be unprovided for.

The inclusion, however, of labour and social legislation in the concurrent list is calculated to impart at once flexibility and strength, and thus avoid those defects which the Canadian Constitution has disclosed in the recent cases on the topic.

A federal form of Government necessarily implies a looser structure than a unitary system, and one of the weaknesses of a federal system is the centrifugal forces it generates. But in the case of this constitution, it is surmised that the factors making for unity are sufficiently strong to keep such forces in check. The frame of S. 100 and the general scheme of the distribution of powers, tend to impart some degree of centralisation to the structure. Further, the phenomenon that we have of nation-wide parties working provincial Governments is bound to have a potent influence in promoting cohesion and unity and to counteract the centrifugal forces of religion and geography. The Courts as the interpreters of the Constitution have no easy or mean task before them. It is to them that one looks forward for that breadth of interpretation which will harmonise the contradictions. They could make it possible to realise the truly Federal ideal of a harmony between National unity with the right of local self-Government; a happy blending of local enthusiasm and national unity, the distinct culture of particular geographical localities, harnessed to the progress of the nation as a whole.

The lack of any power in the legislatures set up to alter the constitution, is the most serious infraction from self-Government. The Joint Select Committee explained and justified this deprivation on the ground that the constitution represented a delicate equipoise of conflicting interests and that any alteration which involved change in the balance would have to be restricted by so many safeguards as to render the power impossible of exercise. But the more serious defect is the procedure prescribed for the alteration of the Instruments of Instruction and for the passing of the Orders in Council. The Instruments of—Instructions embody in part the constitutional conventions that ought to guide the supreme executive head in the discharge of his functions and in the use of his powers, and these have been in the Dominions the most potent instrument of change towards complete self-Government. The normal procedure by which these are issued is that the Government of the day take the responsibility and they do not come before the legislature at all. This Act however prescribes in both these cases a resolution of both the Houses as a requisite before they can be issued.

Speaking in the House of Commons Sir Samuel Hoare disclaimed that the intention of the procedure was to have the protection of the "other House", but the political complexion of the 'other House' is well-known and whatever be the motive underlying this procedure, the fact

is undeniable that it considerably detracts from the flexibility of the constitution.

The legal or *quasi* legal impediments in the way of the expansion of the powers conferred on the ministers under the Act, and on the devolution of responsibilities on the Indian Legislatures and Governments as flowing from the provisions of S. 6 (5) and the 2nd Schedule are dealt with in the notes to S. 110 and to the 2nd Schedule, and it is unnecessary to refer to them here.

The question then arises whether this constitution holds any promise of India attaining to Dominion Status. In this connection the disinclination of the Statutory Commission and the Joint Parliamentary Committee to the use of that expression, is not without significance. The intention of Parliament as set forth in the preamble to the Act of 1919, which has been reiterated, by force of the saving in S. 321. is the realisation of Responsible Government in India as an integral part of the Empire; or as set out in the Instrument of Instructions to the Governor-General "that the partnership between India and the United Kingdom within our Empire may be furthered to the end that India may attain its due place among our Dominions". The Attorney-General explained the expression "due place" thus: "The due place of India among His Majesty's Dominions must be, in the very nature of the country, something not quite the same as the place, shall I say of New Zealand or of South Africa or of the other Dominions. India is a far different proposition altogether. I have no doubt that if this Parliament represents the wishes and intention of the British people, India will attain her due place amongst His Majesty's Dominions; but that is not to say that the problems with which she will have to deal, in the nature of external affairs or problems of defence, will be problems that will be settled in precisely the same way as those in which similar problems, if they arise at all, are settled in connection with His Majesty's other Dominions.

"The British Empire is a great conception, but it is not built up by thinking of our Dominions as if they were all square edifices of precisely the same nature. India will take her due place amongst the Dominions, not because any of us was a sort of lawyer's conception of what Dominion status precisely is, but because by taking advantage of the powers and responsibilities conferred upon her by Parliament from time to time she takes what she desires to take, her due and proper place in this great union of Dominions and of peoples who have control over their own destinies and the management of their own affairs". (Par. Deb. Vol., 302, Cols. 1366-67).

Amidst the diversity of religion, language and culture, there is emerging a nation with roots in a sense of common faith and common purpose, of common sacrifices, and common hopes; and the word 'India' calls forth a response, whose reality is not open to doubt though it eludes analysis. Is this constitution capable of growth to meet the needs of that great conception?

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APPENDIX.

PUBLIC DEPARTMENT.

(Reforms).

NOTIFICATIONS.

Fort St. George, the 7th April, 1936.

No. 3.—The following notifications of the Government of India are republished :—

LEGISLATIVE DEPARTMENT.

New Delhi, the 1st April, 1936.

No. 143/36-P.—Whereas by the Government of India (Constitution of Orissa) Order, 1936, His Majesty has been pleased to direct that the provisions of S. 71 of the Government of India Act, (Except sub-S. (4) thereof) hereinafter called “the said section”, shall apply to the whole of Orissa;

And whereas the Local Government of Orissa has proposed to the Governor-General in Council drafts of the following Regulations, together with the reasons for proposing the same,

And whereas the Governor-General in Council has taken the said drafts and reasons into consideration and has approved the drafts and the same have received the assent of the Governor-General on the first day of April, 1936;

In pursuance of the direction contained in sub-S. (2) of the said section, the said Regulations are published in the Gazette of India.

REGULATION NO. I OF 1936.

A Regulation to declare the law in force in the Province of Orissa.

Whereas it is expedient to declare the law in force in the Province of Orissa; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Regulation may be called THE ORISSA LAWS REGULATION, 1936.

(2) It extends to the whole of the Province of Orissa except the districts of Angul and the Khondmals and the tracts of country specified in S. 2 of the Ganjam and Vizagapatnam Act, 1839.

(3) It shall come into force on the 1st day of April, 1936.

2. In this Regulation the expression ‘area transferred to Orissa’ means area transferred to the Province of Orissa by the Government of India (Constitution of Orissa) Order, 1936.

*Cesser of the Madras District Police Act, 1859, and extension
of the Police Act, 1861.*

Cesser of the Madras District Police Act, 1859, and extension of the Police Act, 1861.

Madras.

(2) All appointments, rules and orders made, powers and duties conferred or imposed and all other things done under the Madras District Police Act, 1859, shall be deemed, so far as may be, to have been respectively made, conferred, imposed or done under the Police Act, 1861.

Cesser of the Madras Civil Courts Act, 1873, and the Central Provinces Courts Act, 1917, and extension of the Bengal, Agra and Assam Civil Courts Act, 1887.

4. (1) The Madras Civil Courts Act, 1873, and the Central Provinces Courts Act, 1917, shall cease to extend and the Bengal, Agra and Assam Civil Courts Act, 1887, shall extend to the areas transferred to Orissa from the Presidency of Madras and the Central Provinces.

(2) All Courts constituted, appointments, rules and orders made, jurisdiction and powers conferred and other things done under the Madras Civil Courts Act, 1873, or the Central Provinces Courts Act, 1917, shall, so far as may be, be deemed to have been respectively constituted, made, conferred or done under the Bengal, Agra and Assam Civil Courts Act, 1887.

Cesser of the Central Provinces Local Self-Government Act, 1920, and extension of the Central Provinces Local Self-Government Act, 1883.

5. (1) The Central Provinces Local Self-Government Act, 1920, shall cease to extend and the Central Provinces Local Self-Government Act, 1883, is hereby extended to the areas transferred to Orissa from the Central Provinces.

(2) All notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under the Central Provinces Local Self-Government Act, 1883, are hereby extended so far as they are applicable, to the areas transferred to Orissa from the Central Provinces.

(3) (a) The areas transferred to Orissa from the Central Provinces shall, for the purposes of the Central Provinces Local Self-Government Act, 1883, be deemed to be part of the district of Sambalpur and to be under the control and administration of the Sambalpur District Council.

(b) The Governor may nominate not more than three persons to be members of the Sambalpur District Council to represent the aforesaid areas, and the persons so nominated shall, notwithstanding anything contained in the Central Provinces Local Self-Government Act, 1883, or the rules made thereunder, be deemed to be members of the Sambalpur District Council, and shall hold office as such members until representatives of the said areas are elected, in accordance with the Central Provinces Local Self-Government Act, 1883, and the rules made thereunder.

Repeal of S. 3 of the Madras Deputy Collectors Act, 1914.

6. S. 3 of the Madras Deputy Collectors Act, 1914, is hereby repealed.

7. Subject to the provisions of paragraphs 16 and 17 of the Government of India (Constitution of Orissa) Order, 1936, all enactments other than enactments repealed by this Regulation made by any authority in British India and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments, which were, immediately before the 1st day of April, 1936, in force in any of the areas comprised in the Province of Orissa, shall, in their application to such areas, be construed as if references therein by whatever form of words to the authorities, territory or Gazettes mentioned in column 1 of the First Schedule were references to the authorities, territory or Gazettes respectively mentioned or referred to opposite thereto in column 2 of the said Schedule.

8. Nothing in any law in force in the Province of Orissa which requires that the draft of any notification, order, scheme, rule, form or by-law shall before being made by the Local Government be laid on the Table of, or be approved by, a Legislative Council, or which requires that any objections or suggestions made in any manner whatsoever by such Legislative Council with respect to any such draft shall be considered by the Local Government or which confers on any Legislative Council the power to make any modifications in any such draft, shall apply to any notification, order, scheme, rule, form or by-law made or issued by the Government of Orissa.

9. The enactments specified in the Second Schedule are hereby repealed.

10. The enactments specified in the Third Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

11. The enactments specified in the Fourth Schedule are hereby extended to the areas specified in the fourth column thereof.

12. All notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under any of the enactments mentioned in column 3 of the Fourth Schedule, are hereby extended, so far as the said notifications, orders, schemes, rules, forms and by-laws are applicable, to the areas respectively mentioned against such enactment in column 4 of the said Schedule.

13. Without prejudice to any provisions made in this behalf by or under the Government of India (Constitution of Orissa) Order, 1936, revenue proceedings pending immediately before the 1st day of April, 1936, (including cases where an appeal lies or will lie from a decision made or to be made) in or in respect of any of the areas transferred to Orissa shall, unless the Governor-General in Council otherwise directs in any case, be continued and disposed of as if the said Order had not been made.

14. Save as otherwise provided by this Regulation, the repeal by this Regulation of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated or referred to, and this Regulation shall not affect the validity or invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted, or the proof of any past act or thing; nor shall this Regulation affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed.

Nor shall the repeal by this Regulation of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not now existing or in force.

FIRST SCHEDULE.

(See S. 7).

Construction of enactments.

1. (a) The Local Government or the Local Government of Madras or the Local Government of Bihar and Orissa or except in connection with any revenue matter the Local Government of the Central Provinces.

(b) The Governor or the Governor of Madras or the Governor of Bihar and Orissa or the Governor of the Central Provinces, except in the Patna University Act, 1917, and the Andhra University Act, 1925.

2. All officers and official bodies not mentioned in the foregoing clauses (except the Treasurer of Charitable Endowments) whose authority extended (whether exclusively or not) immediately before the commencement of the Government of India (Constitution of Orissa) Order, 1936, over the territories or any part of the territories mentioned in the First Schedule to that Order as well as over other territories.

3. (a) The Presidency of Madras.

(b) The Province of Bihar and Orissa.

(c) The Central Provinces.

1. The Governor of Orissa.

2. The same officers or official bodies, or such other officers or official bodies as the Governor of Orissa may by notification in the Local Official Gazette under paragraph 17 of the Government of India (Constitution of Orissa) Order, 1936, direct.

3. (a) The areas separated from the Presidency of Madras and forming part of the Province of Orissa.

(b) The areas separated from the Province of Bihar and Orissa and forming part of the Province of Orissa.

(c) The areas separated from the Central Provinces and forming part of the Province of Orissa.

4. The Local Official Gazette or the Local Official Gazette of the Government of Madras, or the Local Official Gazette of the Government of Bihar and Orissa, or the Local Official Gazette of the Government of the Central Provinces, or the District Gazette published in the districts of Ganjam and Vizagapatam.

4. The Local Official Gazette of the Government of Orissa.

SECOND SCHEDULE.

(See S. 9.)

Enactments repealed.

Year. (1)	Number. (2)	Subject or short title. (3)
PART I.—BENGAL REGULATIONS.		
1812	XVIII	The Bengal Leases and Land Revenue Regulation, 1812.
PART II.—MADRAS REGULATION.		
1802	XIX	The Indian Civil Service (Madras) Loans Prohibition Regulation, 1802.
1819	II	The Madras State Prisoners Regulation, 1819.
1831	V	The Madras Stamp Penalties Regulation, 1831.
PART III.—ACT OF THE GOVERNOR-GENERAL IN COUNCIL.		
1912	II	The Co-operative Societies Act, 1912.
PART IV.—BENGAL ACTS.		
1864	VII	The Salt Act, 1864.
1873	I	The Bengal Salt Act, 1873.
1880	VI	The Bengal Drainage Act, 1880.
1895	III	The Land Records Maintenance Act, 1895.
PART V.—BIHAR AND ORISSA ACTS.		
1916	II	The Bihar and Orissa Medical Act, 1916.
1922	V	The Bihar and Orissa Private Irrigation Works Act, 1922.
1922	VI	The Bihar and Orissa, Minor Irrigation Works Act, 1922.
PART VI.—MADRAS ACTS.		
1888	I	The Local Authorities Loans Act, 1888.
1914	IV	The Madras Medical Registration Act, 1914.
1920	IV	The Madras Children Act, 1920.
1923	V	The Madras State Aid to Industries Act, 1922.
1926	V	The Madras Borstal Schools Act, 1925.
1929	XI	The Madras Services Commission Act, 1929.
1931	V	The Madras Government Roads Traffic Control Act, 1931.
1934	X	The Madras Co-operative Land Mortgage Banks Act, 1934.
PART VII.—CENTRAL PROVINCES ACTS.		
1915	II	The Central Provinces Excise Act, 1915.
1916	I	The Central Provinces Medical Registration Act, 1916.
1916	II	The Central Provinces Land Alienation Act, 1916.
1920	III	The Central Provinces Primary Education Act, 1920.
1922	I	The Local Authorities Loans (Central Provinces Amendment) Act, 1922.
1922	II	The Central Provinces Municipalities Act, 1922.
1922	III	The High School Education Act, 1922.
1923	V	The Nagpur University Act, 1923.

Year.	Number.	Subject or short title.
(1)	(2)	(3)
PART VII.—CENTRAL PROVINCES ACTS. (<i>Contd.</i>)		
1928	IX	The Central Provinces Borstal Act, 1928.
1928	X	The Central Provinces Children Act, 1928.
1929	I	The Opium (Central Provinces Amendment) Act, 1929.
1930	VII	The Co-operative Societies (Central Provinces Amendment) Act, 1930.
1932	I	The Central Provinces Motor Vehicles Taxation Act, 1932.
1933	IX	The Central Provinces Local Fund Audit Act, 1933.
1933	XII	The Central Provinces State Aid to Industries Act, 1933.

THIRD SCHEDULE.

(See S. 10).

Enactments amended.

Year.	Number.	Subject or short title.	Amendments.
(1)	(2)	(3)	(4)
PART I.—BIHAR AND ORISSA ACTS.			
1925	II	The Bihar and Orissa Local Fund Audit Act, 1925.	In sub-S. (1) of S. 10 after the words "recoverable from him" the following shall be inserted, namely:— "as an arrear of land revenue under S. 94 of the Central Provinces Land Revenue Act, 1881, or"
1930	II	The Bihar and Orissa Motor Vehicles Taxation Act, 1930.	After S. 13 the following shall be inserted, namely:— "13-A. Notwithstanding anything contained in this Act a tax paid in respect of any motor vehicle under the Madras Motor Vehicles Taxation Act, 1931, in respect of which a licence has been granted under sub-cl. (1) of cl. (a) of sub-S. (3) of S. 5 of the Madras Motor Vehicles Taxation Act, 1931 by a licensing officer appointed for the whole or any part of the areas transferred to Orissa from the Presidency of Madras shall be valid throughout the whole of Orissa and shall be deemed, so far as may be, to have been paid under this Act".
PART II.—MADRAS ACTS.			
1926	III	The Madras Nurses and Midwives Act, 1926.	1. In cl. (a) of S. 2, for the word "Madras" the word "Orissa" shall be substituted. 2. For S. 3, the following shall be substituted, namely:—

Year. (1)	Number. (2)	Subject or short title. (3)	Amendments. (4)
		PART II.—MADRAS ACTS. (Contd.)	3. "(1) A Council shall be established and called the Orissa Nurses and Midwives Council, and such council shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued. (2) The said Council shall consist of five members to be nominated by the Local Government. (3) The term of office of a member shall continue for so long as the Local Government may in the case of each member direct. (4) The name of every member nominated under this section shall be published by the Local Government in the Orissa Gazette. (5) No act of the Council or of its officers shall be deemed to be invalid by reason only that the number of members of the Council was, at the time of the performance of such act, less than five". 3. S. 4 shall be omitted. 4. For sub-S. (2) of S. 8, the following shall be substituted, namely:— "(2) Such appeal shall be heard by a Tribunal of three persons appointed by the Governor". 5. In sub-S. (2) of S. 11, —(i) cl. (a) shall be omitted, and (ii) for cl. (c) the following shall be substituted, namely:— "(c) regulating the procedure of the Tribunal appointed under sub-S. (2) of S. 8". 6. In S. 15 the words a "Presidency Magistrate or" shall be omitted. After S. 7 the following section shall be inserted, namely:— "8. Notwithstanding anything contained in this Act, a tax paid in respect of any motor vehicle for which a receipt has been granted under S. 11 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930, by a taxing officer appointed under that Act for the whole or any
1931	III	The Madras Motor Vehicles Taxation Act, 1931.	

Year. (1)	Number. (2)	Subject or short title. (3)	Amendments. (4)
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PART II.—MADRAS ACTS. (Concl'd.)

part of the areas transferred to Orissa from the Province of Bihar and Orissa or transferred to Orissa from the Central Provinces shall be valid throughout the whole of Orissa and shall be deemed, so far as may be, to have been paid under this Act".

FOURTH SCHEDULE.

(See S. 11.)

Enactments the application of which is extended.

Year. (1)	Number. (2)	Subject or short title. (3)	Areas to which extended. (4)
PART I.—BENGAL REGULATIONS.			
1793	XXXVIII	The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1793.	The areas transferred to Orissa from the Presidency of Madras and the Central Provinces.
1818	III	The Bengal State Prisoners Regulation, 1818.	The areas transferred to Orissa from the Presidency of Madras.
1823	VII	The Indian Civil Service (Bengal) Loans Prohibitions Regulation, 1823.	The areas transferred to Orissa from the Presidency of Madras and the Central Provinces.
PART II.—BIHAR AND ORISSA ACTS.			
1915	II	The Bihar and Orissa Excise Act, 1915.	The areas transferred to Orissa from the Central Provinces.
1922	VII	The Bihar and Orissa Municipal Act, 1922.	The areas transferred to Orissa from the Central Provinces.
1923	VI	The Bihar and Orissa State Aid to Industries Act, 1923.	The areas transferred to Orissa from the Presidency of Madras and the Central Provinces.
1924	III	The Bihar and Orissa Aerial Ropeways Act, 1924.	The areas transferred to Orissa from the Presidency of Madras and the Central Provinces.
1925	II	The Bihar and Orissa Local Fund Audit Act, 1925.	The areas transferred to Orissa from the Central Provinces.
1926	III	The Bihar and Orissa Highways Act, 1926.	The areas transferred to Orissa from the Presidency of Madras and the Central Provinces.
1930	II	The Bihar and Orissa Motor Vehicles Taxation Act, 1930.	The areas transferred to Orissa from the Central Provinces.
1933	I	The Bihar and Orissa Public Safety Act, 1933.	The areas transferred to Orissa from the Presidency of Madras and the Central Provinces.
1935	VI	The Bihar and Orissa Co-operative Societies Act, 1935.	The areas transferred to Orissa from the Central Provinces.

REGULATION No. III OF 1936.

A Regulation to provide for the consolidation of certain appellate and Revisional powers in the Province of Orissa.

Whereas it is expedient to provide for the consolidation of certain appellate and Revisional powers in the Province of Orissa; It is hereby enacted as follows:—

Short title, application and commencement. 1. (1) This Regulation may be called THE ORISSA CONSOLIDATION OF APPEALS REGULATION, 1936.

(2) It applies to the Province of Orissa.

(3) It shall come into force on the 1st day of April, 1936.

2. Where appellate or Revisional powers which were, immediately before the coming into force of the Government of India (Constitution of Orissa) Order, 1936, vested in separate Courts or authorities have, by reason of any direction issued under the provisions of the said Order, or by reason of any Regulation issued under S. 71 of the Government of India Act, become vested in the Revenue Commissioner for Orissa.

(a) the appellate or revisional powers which are so vested in the said Revenue Commissioner shall be deemed to be consolidated, and

(b) the period of limitation for an appeal or application for revision to the Revenue Commissioner shall be the longest period within which an appeal or application for revision could have been made to any of the Courts or authorities whose powers are so consolidated, if such powers had not been consolidated.

HOME DEPARTMENT.

JUDICIAL.

New Delhi, the 1st April, 1936.

No. F. 210/36 Judicial.—In exercise of the powers conferred by paragraph 20 of the Government of India (Constitution of Orissa) Order, 1936, the Governor-General in Council is pleased to direct as follows:—

1. Every proceeding pending on the appointed day before any Court, other than a High Court, in, or in respect of, any area transferred by the said Order to Orissa shall be continued, as if the said Order had not been made.

2. Any appeal or application for revision in respect of any proceeding so pending or of any decision made before the appointed day in any such Court in or in respect of any such area shall lie in the Court which has appellate or revisional jurisdiction as the case may be over the Court which would have jurisdiction to try such proceeding if the proceeding were instituted after the appointed day:

Provided that, where the proceeding relates to any property situate partly within and partly without any area transferred by the said Order to Orissa, any appeal or application for revision shall lie as if the said Order had not been made.

THE GOVERNMENT OF INDIA (FEDERAL COURT) ORDER, 1937
AT THE COURT AT BUCKINGHAM PALACE.

The 29th day of July, 1937

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by sub-section (1) of section two hundred of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act") provision is made for the establishment of a Federal Court consisting of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary, so, however, that (except in the circumstances mentioned in the said sub-section) the number of those other Judges shall not exceed six:

AND WHEREAS by section two hundred and one of the Act the Judges of the Federal Court are to be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

AND WHEREAS by virtue of the powers vested in him by sub-section (3) of section three hundred and twenty of the Act His Majesty in Council has made provision as to the dates on which certain sections of Chapter 1 of Part IX of the Act (being the chapter which contains the provisions of the Act with respect to the Federal Court) shall come into force, but no such provision has yet been made with respect to section two hundred and fifteen of the Act:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered as follows:—

Introductory.

1. (1) This Order may be cited as "THE GOVERNMENT OF INDIA (FEDERAL COURT) ORDER, 1937."

(2) Paragraph three of this Order shall take effect forthwith, but, save as aforesaid, the provisions of this Order shall come into operation on the first day of October, nineteen hundred and thirty-seven.

2. (1) In this Order, except where it is otherwise expressly provided or the context otherwise requires—

"Chief Justice" means the Chief Justice of India, but does not include an acting Chief Justice;

“acting Chief Justice” means a Judge appointed under section two hundred and two of the Act to perform the duties of the Chief Justice of India;

“Judge” means a Judge of the Federal Court and includes the Chief Justice, an acting Chief Justice and an acting Judge;

“Puisne Judge” includes an acting Chief Justice and an acting puisne Judge;

“High Court” means a court which is a High Court for the purposes of the Act;

“Chartered High Court” means a High Court other than a Chief Court or a Judicial Commissioner’s Court;

“actual service” includes—

(a) time spent by a Judge on duty as Judge, or in the performance of such other functions as he may at the request of the Governor-General undertake to discharge;

(b) vacations; and

(c) joining time on transfer from a High Court to the Federal Court;

“service for pension” includes—

(a) actual service;

(b) joining time taken on return from leave out of India;

“service as a Judge in India” means such service rendered either in the Federal Court only or in that Court and in one or more of the High Courts, and “Judge in India” and “service for pension as a Judge in India” shall be construed accordingly;

“term-time” means any part of the year not included in a vacation;

“vacation” means a vacation fixed by or under Rules of Court made with the approval of the Governor-General in his discretion under section two hundred and fourteen of the Act.

(2) The interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The provisions of section two hundred and fifteen of the Act (which relates to ancillary powers of the Federal Court) shall come into force on the making of this Order.

Expenses for Equipment and Voyage.

4. There shall be paid to a Judge who was permanently resident in Europe at the date of his appointment an allowance of five hundred pounds for expenses in respect of equipment and travelling on appointment.

Salaries.

5. There shall be paid to a Judge in respect of time spent on actual service salary at that one of the following rates which is appropriate to him, that is to say—

Chief Justice, or acting Chief Justice	... Rs. 7,000 per month;
Any other Judge, or an acting Judge	... Rs. 5,500 per month;

Provided that, if a Judge at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Crown in India, his salary in respect of service in the Federal Court shall be reduced by the amount of that pension.

Leave and Vacation.

6. Leave may be granted to a Judge during term-time in the following circumstances:—

- (a) on medical certificate, for a period not exceeding six months, or for two or more periods not exceeding in the aggregate six months during the whole period of his service as Judge;
- (b) for a period not exceeding six months, and not more than once during the whole period of his service as a Judge, otherwise than on medical certificate.

7. There shall be payable to a Judge in lieu of salary—

- (a) in respect of any period of leave, an allowance at the rate of one thousand one hundred and ten rupees a month if resident in Asia during his leave, and at the rate of one hundred and eleven pounds a month if resident outside Asia;
- (b) in respect of joining time on his return from leave out of India, an allowance at the rate of one thousand one hundred and ten rupees a month.

8. Extraordinary leave not exceeding six months in duration may be granted during term-time not more than once during the period of a Judge's service as such in excess of any leave permissible under paragraph six of this Order, but no salary or allowances shall be payable in respect of the period of such leave.

9. (1) If a Judge overstays his leave or any vacation, he shall receive no salary in respect of the period of his absence in excess of the leave granted to him or beyond the end of the vacation, as the case may be:

Provided that, if such absence is due to circumstances beyond his control, the period thereof may be treated as leave entitling him to such allowances as are mentioned in paragraph seven of this Order, but no account shall be taken of that period for the purposes of paragraph six of this Order.

(2) Nothing in this Order shall be construed as requiring a Judge to rejoin on the expiration of a period of leave when that period expires immediately before the commencement of a vacation, nor as authorising any acting Chief Justice or acting Judge to continue to hold his acting appointment during a vacation.

10. The power to grant, refuse, revoke or curtail leave shall be vested in the Governor-General exercising his individual judgment, after consultation with the Chief Justice.

Passages.

11. (1) A Judge who is a member of the Indian Civil Service shall have such rights in respect of passages for himself and his wife and children, if any, as under the rules of that Service he would have had if he had not been appointed a Judge, his services as a Judge in India being treated as service for the purpose of determining those rights.

(2) Any other Judge whose domicile at the date of his first appointment as a Judge in India was elsewhere than in Asia shall have such rights in respect of passages for himself and his wife and children, if any, as under the rules for the time being applicable to persons who became members of the Indian Civil Service on that date, he would have had if he had become a member thereof on that date and if his service as a Judge in India were treated as service therein for the purpose of determining those rights:

Provided that—

- (i) if he has received an allowance for equipment and voyage on appointment as a Judge in India, he shall not be entitled to a passage (whether for himself, or his wife or children) until the completion of five years, nor to a second passage until the completion of ten years, total service as a Judge in India; and
- (ii) if he dies while serving as a Judge, his wife and children shall not be entitled to any concession in respect of passages in addition to the gratuity for which provision is made in this Order.

Pensions.

12. (1) Subject to the provisions of this Order, a pension shall be payable in accordance with the provisions thereof to a Judge of the Federal Court on his retirement if, but only if,—

- (a) he has completed not less than seven years' service for pension as a Judge in India; or
- (b) he has completed not less than three years' service for pension as a Judge of the Federal Court and has attained the age of sixty-five years; or
- (c) he has completed not less than three years' service for pension as a Judge of the Federal Court and his retirement is medically certified to be necessitated by ill-health; or
- (d) he is a member of the Indian Civil Service who under the rules of that Service is entitled to retire with a pension.

(2) The Secretary of State may for special reasons direct that any period not exceeding three months shall be added to a Judge's service for pension, and any such period so added shall count for pension purposes—

- (a) in the case of a Judge who has served in the Federal Court as Chief Justice only, as service as Chief Justice; and

- (b) in the case of any other Judge of the Federal Court, as service as a puisne Judge.

13. Subject to the subsequent provisions of this Order, the pension payable thereunder to a Judge who on his retirement is entitled to a pension shall be calculated—

- (a) in the case of a Chief Justice, other than a Chief Justice who is so entitled only by virtue of being a member of the Indian Civil Service, and in the case of a puisne Judge who is not a member of the Indian Civil Service, in accordance with the rules in Part I of the First Schedule to this Order;
- (b) in the case of a Chief Justice who is so entitled only by virtue of being a member of the Indian Civil Service and in the case of a puisne Judge who is a member of the Indian Civil Service, in accordance with the rules in Part II of the said Schedule.

14. The pension payable to a Judge to whom paragraph twenty-seven (provision as to existing Judges) of the Government of India (High Court Judges) Order, 1937, applied before the date of his appointment to the Federal Court shall in no case be less than the pension which would have been payable to him under the rules to which he was subject immediately before that date if his service, if any, as Chief Justice of the Federal Court had been service as Chief Justice of the Calcutta High Court and his service, if any, as a puisne Judge of the Federal Court had been service as Chief Justice of one or more of the Chartered High Courts, other than those at Calcutta or Nagpur.

15. (1) The provisions of this paragraph shall apply in relation to a Judge who is a member of a civil service of the Crown in India.

(2) If any such Judge is entitled to a pension under the foregoing provisions of this Order he shall elect to receive either that pension or such pension as is referred to in the next succeeding sub-paragraph.

(3) If any such Judge is not entitled to a pension under the foregoing provisions of this Order or, being entitled to such a pension, elects not to receive that pension, the pension payable to him shall be—

- (a) the pension for which he would have been eligible under the rules of his civil service if he had not been appointed a Judge in India, his service as a Judge in India being treated as service for the purpose of calculating that pension; and
- (b) if he is not a member of the Indian Civil Service, a special additional pension of five hundred rupees per annum in respect of each completed year of service for pension as a Judge in India, but not in any case exceeding two thousand five hundred rupees per annum.

16. If at the time of his appointment to the Federal Court a Judge is in receipt of a pension in respect of previous service as a Judge of a High Court the pension payable to him under this Order shall be an additional pension for service in the Federal Court equal to the difference between his original pension and the pension to which he would have been entitled under this Order if his service in the Federal Court had been rendered in continuation of the previous service for which his original pension was granted.

17. There shall be paid to the legal personal representatives of any Judge who dies while in possession of his office and who was at the time of his first appointment as a Judge in India permanently resident in Europe—

- (a) if the death occurred more than six months after the date of his assumption of office as a Judge in India a sum equal to six months' salary in addition to any salary due to the Judge at the date of his death; or
- (b) if the death occurred within six months after his assumption of office as a Judge in India or during his voyage to India for the purpose of first assuming office as such, such sum as with any amount received by or due to the Judge on account of salary will make up the amount of one year's salary.

18. The rules for the time being in force with respect to the grant of extraordinary pensions and gratuities and privileges in regard to special disability leave and passages to, or in respect of, members of the Indian Civil Service who may suffer injury or die as a result of violence shall apply in relation to a Judge, whether a member of a civil service or not, subject, however, to the modification that references in those rules to tables of injury gratuities and pensions and of family gratuities and pensions, shall be construed as references to the tables in the Second Schedule to this Order.

19. Pensions expressed in sterling only shall, if paid in India, be converted at such rate of exchange as the Secretary of State may from time to time prescribe:

Provided that nothing in this paragraph shall affect any specific privilege in respect of the conversion of sterling pensions which was conferred by any Rules previously in force on persons who on the 1st February, 1921, were members of a civil service of the Crown in India.

20. The Civil Pensions (Commutation) Rules applicable to persons appointed by the Secretary of State shall with any necessary modifications apply to Judges of the Federal Court.

21. Save as may be otherwise expressly provided in the relevant rules relating to the grant of extraordinary pensions and gratuities, the authority competent to grant pension to a Judge under the provisions of this Order shall be the Governor-General, exercising his individual judgment.

Travelling Allowances.

22. A Judge shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty in India and shall be afforded such reasonable facilities in connection with travelling as the Governor-General may from time to time prescribe exercising his individual judgment.

Subsidiary.

23. Subject to the provisions of this Order and of any other Order in Council made under the Act, the conditions of service of a Judge shall be determined by the rules for the time being applicable to an officer of non-Asiatic domicile or, as the case may be, of Asiatic domicile, appointed by the Secretary of State to a civil service of the Crown in India and holding the rank of Secretary to the Government of India:

Provided that nothing in this paragraph shall have effect so as to give to a Judge who is a member of a civil service of the Crown in India less favourable terms in respect of any of his conditions of service than those to which he would be entitled as a member of his civil service if he had not been appointed a Judge, his service as a Judge in India being treated as service for the purpose of determining those terms.

Repeal and Saving.

24. Subject as hereinafter provided, paragraphs two and four to ten of the Government of India (Federal Court) Order, 1936, shall cease to have effect:

Provided that in relation to the first Chief Justice of India this Order shall have effect as if for the provisions of paragraphs twelve to seventeen thereof there were substituted the provisions of paragraphs five and six of the said Order of 1936.

FIRST SCHEDULE.

(Paragraph 13.)

PENSIONS OF JUDGES

PART I.

1. The Judges to whom the provisions of this Part of this Schedule apply are a Chief Justice, not being a Chief Justice who is entitled to a pension only by virtue of being a member of the Indian Civil Service, and a puisne Judge who is not a member of the Indian Civil Service.

2. The pension payable to a Chief Justice who has completed seven years' service for pension as a Judge in India shall be an amount equal to the sum of the following amounts, that is to say—

- (i) an amount equal to the pension which would have been payable to him in accordance with the scale and rules in Part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937; if his service as Chief Justice of the Federal Court had been rendered as Chief Justice of the Calcutta High Court, and his service, if any, as a puisne Judge of the Federal Court had been rendered as Chief Justice in any one or more of the Chartered High Courts other than those at Calcutta and Nagpur;
- (ii) an additional amount of £15 for each completed year of service as Chief Justice of the Federal Court until he has become entitled to a pension of £1,800, and thereafter an additional amount of £90 for each completed year of such service:

Provided that the aggregate amount of his pension shall in no case exceed £2,000 per annum.

3. The pension payable to a puisne Judge to whom this Part of this Schedule applies and who has completed seven years' service for pension as a Judge in India shall be an amount equal to the pension which would have been payable to him in accordance with the scale and rules in Part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937, if his service as Judge of the Federal Court had been rendered as Chief Justice in any one or more of the Chartered High Courts other than those at Calcutta and Nagpur.

4. The pension payable to a Judge (whether a Chief Justice or a puisne Judge) to whom this Part of this Schedule applies, and who has completed three years' service for pension in the Federal Court, but less than seven years' service for pension as a Judge in India shall be—

- (i) for each completed year of service as Chief Justice of the Federal Court, £140,

(ii) for each completed year of service as a puisne Judge of the Federal Court, £105:

Provided that a Judge who has rendered service for pension both as Chief Justice of the Federal Court and also as a puisne Judge of that Court may claim that any period of service for pension less than a completed year rendered by him as Chief Justice shall be treated for the purposes of this sub-paragraph as service for pension rendered by him as a puisne Judge.

5. If a puisne Judge of the Federal Court who has served as acting Chief Justice thereof is subsequently appointed Chief Justice, his service as acting Chief Justice shall, for the purposes of paragraphs two and four of this Part of this Schedule, be treated as service as Chief Justice.

6. For the purpose of calculating, under paragraphs two and three of this Part of this Schedule, the pension which would have been payable in accordance with the scale and rules in Part I of the Third Schedule to the Government of India (High Court Judges) Order, 1937, the period during which a Judge of a Chartered High Court who is appointed Chief Justice or a puisne Judge of the Federal Court performed in an acting capacity the duties of a Chief Justice of a Chartered High Court shall count as though he had been subsequently appointed to be Chief Justice of that High Court.

PART II.

1. The Judges to whom the provisions of this part of this Schedule apply are a puisne Judge of the Federal Court who is a member of the Indian Civil Service, and a Chief Justice of the Court who is entitled to a pension only by virtue of being a member of the Indian Civil Service.

2. The pension payable to any such Judge shall be—

(a) the pension to which he is entitled under the ordinary rules of the Indian Civil Service, his service as a Judge in India being treated as service therein, and

(b) an additional pension of £105 for each completed year of service for pension in the Federal Court:

Provided that—

(i) his aggregate pension shall not exceed £1,500;

(ii) his aggregate pension shall not be less than the pension to which he would have been entitled under the Government of India (High Court Judges) Order, 1937, if his service in the Federal Court had been rendered as Chief Justice in one or more of the Chartered High Courts, other than those at Calcutta and Nagpur.

SECOND SCHEDULE.

(Paragraph 18.)

INJURY GRATUITIES AND PENSIONS.

Officer.	Gratuity.		Annual Pension Higher Scale.		Annual Pension Lower Scale.	
	Ra.	£	Ra.	£	Ra.	£
The Chief Justice of India or acting Chief Justice or a Judge or acting Judge of the Federal Court ..	27,000	2,025	5,400	405	4,700	352

FAMILY GRATUITIES AND PENSIONS.

A.—WIDOWS.

Officer.	Gratuity.		Annual Pension.	
	Ra.	£	Ra.	£
The Chief Justice of India or acting Chief Justice or a Judge or acting Judge of the Federal Court	17,000	1,275	5,000	375

B.—Children.

		Annual Child's Pension.
		Rs. £.
If Child is motherless	...	550 41
If Child is not motherless	..	320 24

No. 59.—The following notification of the Government of India is republished:—

**THE GOVERNMENT OF INDIA
(HIGH COURT JUDGES) (AMENDMENT) ORDER, 1937.
AT THE COURT AT BUCKINGHAM PALACE.**

The 29th day of July 1937.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS in the exercise of the powers conferred on him by sections two hundred and twenty and two hundred and twenty-one of the Government of India Act, 1935, His Majesty in Council was pleased to make the Government of India (High Court Judges) Order, 1937 (hereafter in this Order referred to as "the principal Order"):

AND WHEREAS by sub-section (2) of section three hundred and nine of the said Act His Majesty in Council is empowered to revoke or vary any Order previously made by him in Council under the said Act:

AND WHEREAS the Judges of the Courts of the Judicial Commissioners of Sind and the North-West Frontier Province, other than the Judicial Commissioners themselves, are in the principal Order referred to as Assistant Judicial Commissioners but are no longer to be so styled, and it is accordingly expedient to amend the references to them in the principal Order:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the said Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers, and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Government of India (High Court Judges) (Amendment) Order, 1937.

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The principal Order shall be amended in the manner specified in the Schedule to this Order.

THE SCHEDULE.

In sub-paragraph (1) of paragraph two of the principal Order, for the definition of "Judge" the following definition shall be substituted:—

"'Judge' includes a Chief Justice, an acting Chief Justice, an acting Judge and an additional Judge;".

In the First Schedule to the principal Order, for the words from "In each case" to the end of the first paragraph there shall be substituted the words "In each case the number is exclusive of the Chief Justice, but includes any additional Judges,"

In the table in the said Schedule, for the entry relating to Sind there shall be substituted the following entry:—

“The Court of the Judicial Commissioner of Sind . . 5,”

In the Second Schedule to the principal Order, for the words “Assistant Judicial Commissioner of Sind” there shall be substituted the words “Judge of the Court of the Judicial Commissioner of Sind”, and for the words from “‘Judge’ includes” to the end of the Schedule there shall be substituted the words “and ‘Judge’ includes an acting or an additional Judge”.

LEGAL DEPARTMENT.

NOTIFICATION.

Fort St. George, September 16, 1937

(*G. O. Ms. No. 161, Legal*).

No.—4 The following Order in Council is republished:—

THE GOVERNMENT OF INDIA (ADAPTATION
OF INDIAN LAWS) SUPPLEMENTARY ORDER, 1937.
AT THE COURT AT BUCKINGHAM PALACE.

The 29th day of July 1937

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935 (hereafter in the recitals to this Order referred to as “the Act”) His Majesty is empowered by Order in Council to provide that as from such date as may be specified in the Order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act:

AND WHEREAS in exercise of the said powers an Order in Council called the Government of India (Adaptation of Indian Laws) Order, 1937 (hereafter in this Order referred to as “the Principal order”) has been made:

AND WHEREAS by sub-section (2) of section three hundred and nine of the Act His Majesty in Council is empowered to vary any Order in Council previously made under the Act:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

2. The Schedules to the Principal Order shall be modified as directed in the Schedule to this Order, and shall have effect, and be deemed always to have had effect, as so modified.

THE SCHEDULE.

Modifications of Schedule I to the Principal Order.

Omit the directions relating to the Madras Inland Customs Act, 1844 (VI of 1844), and the Bombay Land Customs Act, 1857 (XXIX of 1857).

For the direction relating to section 6 of the Cattle Trespass Act, 1871 (I of 1871), substitute:—

“For section 6 substitute:

‘6. The Provincial Government shall appoint a pound-keeper for every pound.
Appointment of pound-keepers. pound-keeper for every pound.
Pound-keepers may hold Any pound-keeper may hold simultaneously any other office under the Crown.

Pound-keepers to be public servants. Every pound-keeper shall be deemed to be a public servant within the meaning of the Indian Penal Code.’”

After the direction relating to section 27 of the Oudh Laws Act, 1876 (XVIII of 1876), insert—

“Section 31.—For ‘at discretion by such Magistrate, or by some officer authorised by him in that behalf substitute ‘by the Provincial Government.’

Section 32.—For ‘Magistrate of the district’ substitute ‘Provincial Government.’

Section 33.—For ‘Magistrate of the district’ substitute ‘Provincial Government’ and for ‘the road-police of his district’ substitute ‘road-police.’”

After the direction relating to section 5 of the Hackney Carriage Act, 1879 (XIV of 1879), insert—

“Section 6.—Omit ‘or section 4.’”

For the direction relating to section 36 of the Bengal, Agra and Assam Civil Courts Act, 1887 (XII of 1887), substitute:—

“Section 36.—For ‘sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive)’ substitute ‘sections 4, 5, 6, 8, 10 or 11.’”

Before the direction relating to the omission of section 23 of the Indian Arbitration Act, 1899 (IX of 1899), insert—

“Section 2.—Omit ‘Subject to the provisions of section 23.’”

In the direction relating to section 1 of the Indian Tea Cess Act, 1903 (IX of 1903), after “Aden” insert “and Burma”.

After the direction relating to section 6 of the Indian Registration Act, 1908 (XVI of 1908), insert—

“Section 8 (as in force in the Provinces of Bombay and Sind)—Omit the proviso to sub-section (1).”

After the direction relating to section 17 of the Indian Registration Act, 1908 (XVI of 1908), insert—

“Section 70-B.—Omit the proviso.”

For the direction relating to section 77 of the Presidency-towns Insolvency Act, 1909 (III of 1909), substitute:—

“Section 77.—For sub-section (1) substitute:

‘(1) (a) The Chief Justice of the High Court at Madras may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvents’ estates and such person or persons as he thinks fit to the office of the deputy official assignee for the said Court and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding any of the said offices for any cause appearing to the Court sufficient.

(b) The Provincial Government of Bengal shall, after consultation with, and with the concurrence of, the Chief Justice of the High Court at Calcutta, appoint substantively or

temporarily a person to the office of official assignee of insolvents' estates for the said Court and may, after the like consultation and with the like concurrence, appoint substantively or temporarily a person or persons to the office of the deputy official assignee for the said Court.

- (c) For the High Court at Bombay, the Provincial Government of Bombay, and for the Court of the Judicial Commissioner of Sind, the Provincial Government of Sind, may from time to time appoint substantively or temporarily such person as the Provincial Government thinks fit to the office of official assignee of insolvents' estates and such person or persons as the Provincial Government thinks fit to the office of the deputy official assignee.'

In sub-section (3) (as in force outside Bengal) omit 'and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900', and 'and in the Chief Court of Lower Burma'; and after the said direction insert—

"For section 81-A substitute:

Salary, allowances and pension of the official assignee and deputy official assignee shall be paid by the Provincial Government.'

Section 81-B.—Omit sub-section (2).

Section 112.—In sub-section (2) omit clause (d), and in clause (g) the words 'of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and'; and at the end of the subsection insert—

'and, in the case of the High Court at Madras, may also provide for and regulate the remuneration of the Official assignee and the payment of the costs, charges and expenses of his establishment.'

For the directions relating to sections 37 and 38 of the Indian Electricity Act, 1910 (IX of 1910), including the new section 38-A inserted after section 38, substitute:—

"Section 36-A.—For 'Local Governments' substitute 'Provincial Governments'; and after 'Central Provinces' insert 'and Berar'.

'Chief Commissioner' shall stand unmodified.

Section 38.—In sub-section (3) 'Gazette of India' shall stand unmodified."

After the direction relating to section 14 of the Indian Motor Vehicles Act, 1914 (VIII of 1914), insert—

"Section 15.—For 'such as is referred to in' substitute 'governed by rules made under' and for 'any rule made under the said clause and' substitute 'the said rules'."

In the direction relating to Part I of Schedule I to the Imperial Bank of India Act, 1920 (XLVII of 1920), for "in clause (a) (vi) omit the proviso" substitute "for the proviso to clause (a) substitute the following:—

'Provided that any advances or loans which, under the law for the time being in force, any of the following Governments or authorities, that is to say, the Secretary of State, any Government in British India, the Federal Railway Authority, the Government of Burma or the Burma Railway Board, may lawfully accept from the Bank may, if the Central Board think fit, be made without any specific security'."

For the directions relating to sections 28, 29 and 31 of the Indian Boilers Act, 1923 (V of 1923), substitute:—

"Section 27-A.—For 'Local Governments' substitute 'Provincial Governments'; and after 'Central Provinces' insert 'and Berar'.

'Chief Commissioner' shall stand unmodified.

Section 28.—'Gazette of India' shall stand unmodified.

Section 29.—In clause (a) omit 'for regulating the salary, allowances and conditions of service'; and omit the proviso.

Section 31.—Sub-section (2) shall stand unmodified."

After the direction relating to sections 9, 10 and 11 of the Indian Cotton Cess Act, 1923 (XIV of 1923), insert—

"After section 12 insert—

'12-A.—As soon as may be after the first day of April 1937, the Committee shall pay to the Government of Burma, for the promotion of agricultural and technological research in the interests of the cotton industry in Burma, the sum of rupees forty-two thousand and sixty-six.'

In the direction relating to section 39 of the Indian Forest Act, 1927 (XVI of 1927), for so much of the new sub-section (4) as provides the proviso substitute:

"(4) Notwithstanding anything in this section, the Provincial Government may, until provision to the contrary is made by the Central Legislature, continue to levy any duty which it was lawfully levying before the commencement of Part III of the Government of India Act, 1935, under this section as then in force."

Omit the direction relating to sub-section (5) of section 4 of the Indian Lac Cess Act, 1930 (XXIV of 1930).

After the direction relating to the Geneva Convention Implementing Act, 1936 (XIV of 1936), insert—

"The Indian Finance Act, 1937.

(Governor-General's Act.)

Section 2.—Omit 'other than Burma or Aden'."

In the direction relating to section 3 of the Indian Penal Code (XLV of 1860), after "Governor-General" insert "of India'".

At the end of the direction relating to section 124 of the Indian Penal Code (XLV of 1860), insert "but save as aforesaid, the section shall stand unmodified".

In the direction relating to section 271 of the Indian Penal Code (XLV of 1860), for "Governor" substitute "Government".

After the direction relating to section 44 of the Code of Civil Procedure, 1908 (V of 1908), insert—

'Section 44-A.—In Explanation 2, omit 'or in India'."

At the end of the direction relating to section 60 of the Code of Civil Procedure, 1908 (V of 1908), insert—

"In clause (1) of the said proviso for 'Governor-General in Council' substitute 'appropriate Government', and after Explanation 2 to sub-section (1) insert—

'Explanation 3.—In clause (1) "appropriate Government" means—

(i) as respects any public officer in the service of the Central Government, or any servant of a Federal Railway or of a cantonment authority or of the port authority of a major port, the Central Government;

(ii) as respects any public officer employed in connection with the exercise of the functions of the Crown in its relations with Indian States, the Crown Representative; and

(iii) as respects any other public officer or a servant of any other railway or local authority, the Provincial Government'."

Modifications of Schedule III to the Principal Order.

For the directions relating to sections 1 and 1-A of the Sindh Courts Act, 1866 (Bombay XII of 1866), substitute—

'Section 1.—In the second sentence omit "three or more" and omit "and the others Additional Judicial Commissioners".

Omit the third sentence.

Section 1-A.—For "Judicial Commissioner and Additional Judicial Commissioners" substitute "Judges of the Court of the Judicial Commissioner"; omit from "shall be appointed" to "removed. They"; and for "Judicial Commissioner and Additional Judicial Commissioner" substitute "Judge".

In the directions relating to the Bombay Salt Act, 1890 (Bombay II of 1890), after "except in the phrases" insert "Government officer".

Omit the direction relating to the Indian Registration (Bombay Amendment) Act, 1929 (Bombay V of 1929).

Modifications of Schedule IV to the Principal Order.

After the direction relating to section 8 of the Bengal Excise Act, 1909 (Bengal V of 1909), insert—

“Sections 9 and 10.—For ‘imposed under section 27’ substitute ‘payable under Chapter V’.”

After the directions relating to sections 463 and 464 of the Calcutta Municipal Act, 1923 (Bengal IIL of 1923), insert—

“Section 482.—At the end insert—

‘(3) The powers conferred by this section on the Provincial Government shall, in relation to any by-law made under clause (69) of section 478, be powers of the Central Government’.”

At the end of the Schedule insert—

“*The Bengal Non-Agricultural Lands Assessment Act, 1936.*
(Bengal XIX of 1936.)

Throughout the Act for ‘the Government’ substitute ‘the Crown’.

For section 18 substitute:

“18. No suit shall be instituted against the Crown under section 17 unless the Crown is interested as landlord or tenant’.”

Modifications of Schedule V to the Principal Order.

At the end insert—

“*The United Provinces Cotton Pest Control Act, 1936.*

(U. P. XI of 1936.)

Section 13.—For ‘the Legislative Council’ substitute ‘both chambers of the Provincial Legislature’.

The United Provinces Muslim Wakfs Act, 1936.

(U.P. XIII of 1936.)

Section 2.—In sub-section (2) for ‘Government’ substitute ‘the Provincial Government’.

Section 3.—In clause (8) for ‘Government’ substitute ‘the Provincial Government’.

Section 16.—For ‘Government gazetted officer’ substitute ‘gazetted officer of the Provincial Government’.

Section 17.—For ‘Government Officer’ substitute ‘officer of the Provincial Government’.

Section 54.—For ‘to the Government’ or ‘to Government’ substitute ‘to the Crown’.

Omit section 67.

Section 68.—For ‘Government’ substitute ‘Provincial Government’.”

Modifications of Schedule VII to the Principal Order.

At the end insert—

“*The Hazaribagh Mines Board Act, 1936.*

(Bihar III of 1936.)

Section 4.—After ‘Railway Board’ insert ‘or after the establishment of the Federal Railway Authority by that Authority’ and for ‘Government official’ substitute ‘person in the service of the Crown’.

Section 13.—In clause (c) of sub-section (1) after ‘realised’ insert ‘by the Board’ and omit ‘fines, penalties’.

Section 15.—For ‘the Government’ substitute ‘the Provincial Government’.

Section 17.—For ‘by Government’ substitute ‘by any Government’.”

Modifications of Schedule VIII to the Principal Order.

After the direction relating to section 25 of the Central Provinces Municipalities Act, 1922 (C. P. II of 1922), insert—

“Section 29.—At the end insert—

"Provided that, where one of the local bodies is a cantonment authority, the decision of the Provincial Government shall be subject to the concurrence of the Central Government."

After the directions relating to section 3 of the Central Provinces Local Fund Audit Act, 1933 (C. P. IX of 1933), insert—

"Section 7.—For 'Government' substitute 'Provincial Government'."

After the directions relating to the Central Provinces Agricultural Pests and Diseases Act, 1936 (C. P. XXXV of 1936), insert—

"The Nagpur Improvement Trust Act, 1936.

(C. P. XXXV of 1936.)

Throughout the Act for 'Government servant' and 'servant of the Government' substitute 'servant of the Crown'.

Section 13.—For 'any general or special orders of the Government for regulating the transfer of Government servants to foreign service' substitute 'the conditions of his service under the Crown relating to transfer to foreign service.'

Sections 43 and 45.—For 'property of, and managed by, Government' substitute 'property of the Crown and managed by the Central Government or the Provincial Government'.

Section 57.—In sub-section (4) omit 'which was at the commencement of this Act the property of Government or has since been acquired by Government and was'.

Section 69.—For 'by Government' substitute 'by the Crown' and for 'or managed by Government' substitute 'the Crown or is managed by the Central Government or the Provincial Government'.

Section 77.—Omit sub-section (4).

Omit sections 78 and 79 and sub-section (2) of section 80.

Section 85.—For 'by Government' substitute 'by the Provincial Government'.

Section 89.—In Clause (k) of sub-section (1) for 'leave or leave allowances under the rules or orders made by the Local Government in this behalf' substitute 'such leave or leave allowances as may be prescribed by the conditions of his service under the Crown relating to transfer to foreign service'.

Section 108.—Omit 'fines and'.

Section 110.—For 'prescribed in any general or special orders of the Local Government' substitute 'required by the conditions of his service under the Crown to be paid by him or on his behalf'.

Section 121.—In sub-section (2) omit 'which was at the commencement of this Act the property of Government or has since been acquired by Government, and was.'

"The Central Provinces Co-operative Land Mortgage Banks Act, 1937.

(C. P. I of 1937.)

Section 7.—In sub-section (2) for 'Council' substitute 'Assembly'.

Sections 17 and 18.—For 'Government' substitute 'the Provincial Government'.

Section 25.—For 'Registrar' substitute 'Provincial Government'.

Section 31.—For 'Government' substitute 'Provincial Government'.

The Central Provinces Famine Relief Fund Act, 1937.

(C.P.I. of 1937.)

Throughout the Act, except in sub-section (8) of section 1, after 'Central Provinces' insert 'and Berar'.

"The Central Provinces Recognised Examinations Act, 1937.

(C. P. X of 1937.)

Section 2.—For 'the Government' substitute 'any Government'."

In the directions relating to the First Schedule to Notification No. 3510—1. B. of 3rd November, 1913, for "Reformatory Schools Act, 1899" substitute "Reformatory Schools Act, 1897".

Modifications of Schedule XI to the Principal Order.

In the directions relating to the North-West Frontier Province Courts Regulation, 1931 (Central Regulation I of 1931), for the directions preceeding that relating to section 7 of the Regulation substitute—

“Throughout the Regulation, except in section 6, for “Additional Judicial Commissioner” and “Additional Judicial Commissioners” substitute ‘other Judge’ and ‘other Judges’ respectively.

Omit section 4.

Section 6.—For “any Additional Judicial Commissioner” substitute “any other Judge of the Court”.”

In the direction relating to section 45 of the Khondmals Laws Regulation, 1936 (Central Regulation IV of 1936), after “any village” insert “or the panchayat, if any,”

. In the direction relating to section 46 of the Angul Laws Regulations, 1936 (Central Regulation V of 1936), after “any village” insert “or the panchayat, if any,”

At the end insert—

“The Orissa Ports Regulation, 1937.

(Central Regulation XI of 1937.)

Throughout the Regulation for ‘Local Government’ substitute ‘Government’.

Section 2.—At the end of the section insert—(d) “The Government” means, in relation to a port which is a major port within the meaning of the Indian Ports Act, 1908, the Central Government and, in relation to any other port, the Provincial Government’.”

THE GOVERNMENT OF INDIA ACT, 1935.

[26 Geo. V, Ch. 2.]

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65. Officers of Chambers.
66. Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

Provisions as to Members of Legislatures.

67. Oath of members.
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THE GOVERNMENT OF INDIA ACT, 1935.

[26 Geo. 5, Ch. 2.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

Introductory.

Short title. 1. This Act may be cited as THE GOVERNMENT OF INDIA ACT, 1935.

NOTES.

There is no preamble to this Act. The Attorney General explained its absence thus:—Much anxious consideration was given to the drafting of this Bill, and it naturally occurred both to the Government and to private Members and to other persons interested in the Bill to consider whether it would not be desirable, as the Government of India Act, 1919, had a Preamble, to have a Preamble to this Bill. That question was decided in the negative and the Bill was introduced without a Preamble. (*Parliamentary Debates Vol. 300, part 78, col. 1361*).

But the want of a preamble is made up by saving from the repeal of the Government of India Act, 1919, the preamble to that Act; this is in order to emphasise that Parliament had not gone back on the statutory declaration made in 1919. See Notes to section 321.

2. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which Government of appertain or are incidental to the government of the India by the Crown. territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty:

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

NOTES.

Previous Statutes.—Cf. Sections 1, 2 and 132 of the Government of India Act, 1919.

Resumption of Powers and their redistribution.—“The dominion and authority of the Crown extends over the whole of British India. It

is derived from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in rights based upon conquest, cession or usage, some of which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company. The Secretary of State is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India, and for the exercise also of certain authority which he derives directly from powers formerly vested in the Court of Directors and the Court of Proprietors of the East India Company, whether with or without the sanction of the body once known as the Board of Control. The superintendence, direction and control of the Civil and Military Government of India is declared by the Government of India Act, 1919 to be vested in the Governor-General in Council, (S. 33) and the Government or administration of the Governors' and Chief Commissioners' Provinces respectively in the local governments; but powers of superintendence, direction and control over "all acts, operations and concerns which relate to the government or revenues of India" are, subject to substantial relaxation in the transferred provincial field, expressly reserved to the Secretary of State; and whether the Governor-General in Council exercises (though no doubt under the general control of the Secretary of State) original powers of his own, or is only the agent and mouthpiece of the Secretary of State, remains perhaps an open question". (*Joint Parliamentary Committee Report, Vol. I, Part I, para 152*.)

"It is clear that, in any new constitution in which autonomous Provinces are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authority by devolution from the Central Government, but the Central Government cannot continue to be an agent of the Secretary of State. Both must derive their powers and authority from a direct grant by the Crown. The legal basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or the Provincial Governments and Administrations; and second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British Indian Provinces are the constituent units will thereby be brought into existence". (*Joint Parliamentary Committee Report, Vol. I, Part I, para 153*.)

"On the repeal of the present Government of India Act all powers appertaining and incidental to the Government of British India will vest in the Crown; and the transition from the existing constitutional position, will be effected by making them exercisable on behalf of the Crown by the Governor-General, the Governors and other appropriate authorities established by or under the Constitution Act. The powers vested in the Crown in relation to the States and now exercisable through the Governor-General of India in Council, except in so far as they are requisite to the appropriate Federal authority for those purposes, will be exercised by the Crown's representative in his capacity of Viceroy, and these powers will be outside the scope of the Federal Constitution."—(*White Paper Proposals, Introduction, S. 9*).

Crown's Prerogative.—All the Crown's rights including the prerogatives having been resumed by the Crown, except in so far as they have been the subject of specific statutory enactment, must be deemed to inhere in the Crown itself. The prerogative of the Crown when not expressly limited by statute is as extensive in the colonial possessions as in Great Britain—*Maritime Bank of Canada v. New Brunswick*, 1892 A.C. 437.

Thus all land in British India is vested in the Crown as ultimate owner and all waste-land its absolute property, see per Sir George Lowndes in *Madura Devasthanam v. Alukhan Sahib*, 61 M.L.J. 285 at p. 292; see *re Transfer of Natural resources to Saskatchewan*, 1932 A.C. 28. This is the foundation of the rule as to escheat, see S. 174 *infra*. Property thus accruing is distributed between the Provinces and the Federation according to the locality of the property, *ibid*.

Treasure trove (*See Treasure Trove Act VI of 1878*) and gold and silver mines must be deemed to belong to the Crown, in right of the Province or the Federation according to the situation of the mine, etc. (*Cf. Hudson's Bay Co. v. Attorney General, Canada*, 1929 A.C. 285). *Cf. however Mayor of Lyons v. E. I. Coy.*, 1 Moo.L.A. 175.

"Mines of precious metals, treasure trove, are all vested in the Crown for the purpose of maintaining its power, and enabling it to defend the State. They are not enjoyed by the Sovereign in all or even in most countries, and no one has said that they extend to the East Indian possessions of the British Crown", 1 M.I.A. 175 at 281.

The Crown has according to the Common Law of India the prerogative of imposing by an executive act assessment on lands and varying the same from time to time. *Bell v. Munic. Commissioners, Madras*, 25 Mar. 437.

The determination with anything like legal precision of all the prerogatives of the British Crown in India is by no means an easy task, *ibid.*

The prerogative of mercy is specially mentioned and provided for in S. 295 (2). The Crown must be deemed to have the prerogative to grant honours of Imperial status; and to settle orders of precedence.

As to annexation of territory to British India, *see* S. 290 and to India S. 311 (1).

The Governor-General of India and His Majesty's Representative as regards relations with Indian States.

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

NOTES.

Office of Governor-General.—The office of Governor-General is constituted by Letters Patent and each incumbent of the office is appointed by commission under the Royal Sign manual. Under S. 34 of the Government of India Act 1919, he was appointed not by Commission but by warrant. *Cf.* now S. 4 as to the appointment of the Commander-in-Chief. Though there is little difference between the two forms, the present provisions bring the appointment of the Governor-General and Governor into line with appointment of Colonial Governors and Governors-General. The Governor-General of India, as the Governor-General of the Dominions, is not a general agent of the Crown, with power to exercise all the prerogatives of the Crown but is only a special agent armed with such power as is conferred on him by the constitution and such other prerogative powers as the Crown may lawfully assign to him. *Per Higgins, J. in Commonwealth v. Colonial Combining, Etc., Ltd.*; 31 C.L.R. 421; *Musgrave v. Pulido*, 5 A.C. 102 and *Commercial Cable Co v. Newfoundland*, (1916) 2 A.C. 610 at p. 616. "For the measure of his powers the words of his Commission and the statute itself must be looked at." *Bonanza Creek v. Rex*, (1916) 1 A.C. 566 at p. 587. For an instance where delegation of a prerogative is expressly contemplated, *see* S. 295 (2), *infra*.

Crown Representative.—Up to and under the Government of India Act 1919 the Governor-General in Council has been the authority through whom the powers of the Crown have been exercised in the Indian states. The Indian states objected to the power being exercised by an authority responsible to the Indian legislature. To give effect to this objection the device was adopted of creating a distinct office of Crown Representative for the States as distinguished from the representative of the Crown in British India, *viz.*, the Governor-General; and a different nomenclature adopted to distinguish that office.

"The reason why this has been done was that it was very important to distinguish between the Governor-General as head of the Federation and the same individual in his capacity as the representative of the Crown in its relations with the Indian States. If the word "Viceroy" had been used we should have got into greater confusion than that which is caused by the use of the words

in the section, because in every case in which the word Viceroy appeared it would not have been clear whether the section was referring to the same individual in his capacity as executive head of the Federation or in his capacity as His Majesty's Representative dealing with the Indian States. For that reason we get over the difficulties of terminology, as in Clause 3, by using the term "Governor-General" as applicable to the Viceroy in his capacity as head of the Federation, while the term "His Majesty's Representative" is used in regard to the exercise of functions required in his relations with the Indian States. It will be seen from S. 3 (3) that it shall be lawful for His Majesty to appoint one person to fill both offices." (*Parliamentary Debates Vol. 300, cols. 1470-71*).

The use of the expression "His Majesty's Representative for the exercise of the functions of the Crown in its relation with Indian States" instead of the more familiar term "Viceroy" was explained by Mr. Butler thus:—

"It is very difficult to get exactly the right phrase. I was attempting to define what in fact, will be the functions which the Viceroy will perform when dealing in the realm of paramountcy outside the federal sphere, and I think the phrase 'Representative of the Crown in its relation with Indian States' is a suitable phrase in which to refer to the 'Viceroy'. . . . 'Viceroy' is a term which has never been used in a Statute or in the Warrant of Appointment; it is a term of courtesy and not of law, but it is intended, following the recommendation of the Joint Select Committee, that it shall continue".—(*Parliamentary Debates, Volume 298, Cols. 255; 258*).

It will be noticed that in respect of the Crown Representative, Clause (a) of sub-S. (1) is not repeated; for except as regards such powers and authority as the Federating States are agreeable to cede to the Federation, the powers heretofore exercised by the Governor-General in Council over the rulers of the States by treaty, usage or under the head of paramountcy are resumed by the Crown under S. 2 and are not vested in or delegated to any Federal authorities; *vide* the exception in sub-S. (1) (b). The functionary through whom such powers of the Crown are to be exercised is designated in sub-S. 2.

4. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

NOTES.

This section corresponds to and reproduces S. 19 of the Government of India Act 1919. The pay and allowances of the Commander-in-Chief are under S. 232 to be fixed by His Majesty in Council.

It should be noted that the Commander-in-Chief is Commander-in-Chief of India—not of British India only. See the definition of 'India', S. 311 (1).

PART II.

The Federation of India.

CHAPTER I.

ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES.

5. (1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

(a) the Provinces hereinafter called Governors' Provinces; and
(b) the Indian States which have acceded or may thereafter accede to the Federation;
and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained, have acceded to the Federation.

NOTES.

Federation as solution of Indian problem.—Explaining the reasons which led the British Government to decide on Federation as a solution of the Indian problem, *Sir Samuel Hoare* said:—

"The first reason that has driven us along the road for including in this Bill the chapter dealing with federation, is the almost unanimous feeling of political India upon the subject.

"Secondly, we have been gravely impressed with the danger of starting these great autonomous provinces without a federal link at the centre, with a body of popular opinion behind it, without which there would be the imminent danger of India breaking up into fragments. I go so far as to say that if we started on the road of provincial autonomy, and did not at the same time make the frame work of an All-India Federation, the result would almost inevitably be that we should never have an All-India Federation at all. The provinces would grow up with a strong provincial feeling behind them, and with every kind of centrifugal force at work. We should have the provinces, with popular support behind them, and we should have a centre weak enough now in many respects but immensely weaker with provincial autonomy once started. We should have these great autonomous provinces, many of them with divergent interests one from the other, but united upon one objective and one objective alone, namely, to extort from the British India centre, a centre without any popular support behind it, the largest amount of money that it could possibly succeed in extorting.

"That state of affairs would be bad enough for India and scarcely less bad for Great Britain. Great Britain has very important interests in the Centre. Take, for instance, the financial interest that we have at the Centre, the interest that depends upon the large sums that are due for meeting the obligations of India to this country, the obligations of the debt, the cost of Indian defence, the cost of pensions for pensioners in this country. I think from the British point of view it would be extremely dangerous to leave the Centre unreformed and at the mercy of these great autonomous Provinces, whose chief objective would be to extort more revenues from the unreformed Centre. That is the second reason why we think it necessary to include the Federal proposals in the Bill.

"There is a third reason, which is connected with the position of the Princes. It might be assumed from some criticisms to which we have listened that our sole object in hoping that the Princes will enter the Federation is, to use the words of my noble friend the Member for Aldershot (Viscount Wolmer), that they should pull the chestnuts out of the fire for us. That is not in the least the real state of affairs. Obviously, we should all of us welcome the entry into the Central Government of India of a great force of stability and Imperial feeling such as is represented by the Princes. That, in my view, would be a great gain to the Central Government of India, but I am thinking rather of the Princes' position and their own interests in the matter. If I were an Indian Prince I should be extremely nervous in seeing these great Provincial autonomous Governments growing up around me, with popular support behind them, and with the Centre remaining in its present unreformed position. I should feel extremely nervous of the constant pressure that the Provinces would be putting on the Centre for provincial revenue. After all the Indian States are interested in keeping indirect taxation low, and not high. They pay a great part of the indirect taxation of India, but they have no say in the Customs Policy. With these great autonomous Provinces constantly pressing the Centre more and more, it would put the Princes in a most dangerous position so far as their future is concerned". (*Parliamentary Debates, Volume 298, Cols. 400-402.*)

Royal proclamation.—A Royal proclamation is a formal announcement of an executive Act; the Act is the resolution of the King in Council but the document by

which it is promulgated—the proclamation—passes under the Great Seal.—Anson, *Law and Custom of the Constitution*, p. 63.

Sub-S. (1) (a).—The Governor's Provinces and the Chief Commissioners Provinces are British Indian Units in the Federation see definition of "unit" in S. 311 (2)). The administration of the Chief Commissioners' Provinces however is controlled by the Federal Government, except in the cases of Baluchistan, the Andamans and the Nicobars. These provinces are under the administrative control of the Governor-General in his discretion. See S. 95 (3) and S. 96.

Governor's Provinces are defined in S. 46 (1) as including the 11 provinces there enumerated and such other provinces as may be created under the Act.

Under S. 290 His Majesty may by Order in Council create new provinces—and when in the exercise of such powers new Governor's provinces are created, they would automatically become units in the Federation.

Sub-S. (2).—The representation of States in the Council of State is determined largely by the dynastic importance of the State as determined by the honours due to its rulers in the matter of salutes, while in the Federal Assembly the population of the State is the main factor which fixes the number of representatives.

The reference to part II of the schedule must be deemed to refer to the number of seats as shown in the Table of Seats, and not as modified by para 10 of the schedule which permits the appointment of additional members of the chambers where seats remain vacant by reason of non-accession. That paragraph can come into operation only after the Federation itself comes into being after the conditions specified in this section are satisfied. Similarly the power of His Majesty in Council to vary the representation of states with a view to reducing the number of seats which by reason of non-accession of states (para- 13) might remain unfilled can be exercised only after the proclamation of the Federation.

6. (1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

Accession of Indian States.

(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession:

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instru-

ment unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

NOTES.

'Instrument of Accession'.—The bill used the expression "His Majesty has signified his acceptance of a *declaration* made by the Ruler thereof". The amendment into "an instrument of accession" was introduced to "make it clear that the Instrument of Accession is the operative document". Similar change of terminology has been made in the rest of the section.

The obligation of the ruler to ensure due effect within the State to the provisions of this Act is limited to provisions which are applicable to the State by virtue of the Instrument of Accession.

"The Instrument of Accession will specify which of the matters mentioned in the legislative list he accepts as matters with respect to which the Federal Legislature may make laws for his State and his subjects." Under the terms of the sub-S. (2) there could be no objection to the ruler of any State agreeing to cede to the Federation powers in respect of matters comprehended in the concurrent list.

In discussing the scope of an instrument of accession, It was said "we contemplate that items 1 to 45 of List I will be the normal field over which the States will surrender their powers. I pause at this point to draw attention to the fact that Items 1 to 45 cover a very wide field of Government."

"The actual details of the treaties must be considered each on its own merits, always with this reservation in mind, that if a State attempts to make reservations that would make its entry of no value to the Federation or not of sufficient value to the Federation, then obviously we must have the power of refusing to accept an entry upon those terms There will be variations, no doubt, as to the exact manner in which the states undertake these federal duties. There again it is a question to be considered when the Instruments of Accession are considered, and once again, if a State attempts to make terms which would make its entry of little or no value to the Federation, then there must be power of refusing the entry of that State. What we want, and what we shall do our utmost to obtain is a basic list of the important subjects with which the states who enter the Federation would as a whole conform". *Parl. Debates*, vol. 298, Cols. 1145-1146.

"First, the States will be invited to accept the first 45 items as federal subjects. They will, of course, be free to accept other subjects if they so wish. secondly, there will, and must, be some variation from State to State, either in the number of subjects or in the qualifications which they attach to their acceptance..

"Within the 45—these variations arising from the different circumstances of the States and the different treaty rights which they may wish to preserve. It will, however, . . . rest with the Crown to accept or reject proposals for accession, and Parliament will be in due course in full possession of all the facts upon which acceptance or rejection has been based. In order to make it quite clear that there is no intention whatever of accepting inadequate condition of accession, I give once again the undertaking to the Committee that the Instruments of Accession will be issued in the form of a White Paper before the House is asked to consider a Proclamation bringing in the Federation, and the House before it pledges itself to Federation, will be in a position to judge whether the accessions have been really effective or not". *Parl. Debates*, vol. 298, Col. 1146.

"The Instrument of Accession may also qualify the provisions of the Act, but only if there are provisions of the Act which expressly authorise their being qualified in that way", as for instance in S. 134; for the accession of the States is to the Federation as established by the Act.

In regard to the executive powers of the Federation in the territory of a federating State see Ss. 124, 125 and 128.

Sub-S. (3).—"Does the provision in sub-S. (3) of S. 6 for supplementary declarations mean that a ruler having once declared his acceptance of such and such federal subjects, subject to such and such qualifications, can by a subsequent instrument withdraw his acceptance of any federal subject or add fresh qualifications or limitations to it? The answer is, "No". The intention of the sub-section is to enable a ruler who has accepted, say, 40 subjects; as federal to signify his acceptance of further subjects or, alternatively, having accepted a particular item; subject to qualifications to restrict those qualifications". *Parl. Deb. Vol. 298, Col. 1151.*

Sub-S. (5).—This sub-section operates almost as a fetter on the powers of Parliament to amend the provisions excepted by the second schedule. Those provisions include two distinct categories.

1. Those which pertain to the states as such—such as representation of states in the legislature.

2. Those which relate to the basic structure of the British Indian portion—as for instance the reservation of certain departments from ministerial control and the exercise of powers by the Governor-General in his discretion. Any amendment of the Act by Parliament in respect of these matters, would affect the accession of the State and the consent of the States to accede to the Federation would have to be obtained anew by a supplementary instrument of accession.

In reference to this provision Sir S. Hoare said: "The dilemma with which we are faced is this: Can you make alterations in any part of the Bill without impinging upon the Princes' Instrument of Accession? If we cannot make alterations, are we not setting up an excessively rigid state of affairs, particularly for British India? That is the dilemma, and the way the Joint Committee dealt with it, and the way we deal with it in the Bill is this—that we put into the second schedule the provisions of the Bill that affect exclusively British India and do not affect the States. If honourable members will look through that very formidable schedule they will see that it contains all the provisions of the Act, or most of them that affect only British India. Questions of that kind obviously should be amenable to future Amendment without endangering the basis on which the princes have made their

access. If anyone looks through that long schedule he will find that there is no provision in it that could be said to affect the Instrument upon which the Princes have acceded." *Parl. Deb. Vol. 298 Col. 1206.*

The Solicitor-General explained the sub-section thus:—"The States will only agree to federate in a structure which within limits, is definite and certain and obviously we could not completely alter the structure afterwards. The purpose of this clause is to lay down those matters which can be altered without being regarded as fundamental or as impinging on the Instrument of Accession." "If the structure were to be altered in fundamental respects, of course the States would clearly have the right to say. "This is not the Federation to which we have acceded." *Parl. Deb. Vol. 298, Col. 1217—1218.*

Sir Samuel Hoare.—"If you amend the parts of the Bill which affect the States, obviously you would be altering the conditions on which they have acceded and that would certainly create a situation in which the Princes could rightly claim that their Instrument of Accession had been altered. It certainly means that we cannot amend any part of the Bill which affects what is virtually the treaties under which the Princes come in. If we make such a change in the Bill as to strike at the basis of their Instrument of Accession, then obviously, the agreement has been broken between the Princes and Parliament and the Princes are free.—*Parl. Deb. Vol. 298, Col. 1211.*

"It will be accepted by everyone that under the general scheme of the Bill the States, when they are asked to federate are entitled to know with certainty certain aspects at any rate of the Federation to which they are to accede. It would be an absurd position if having said to a State this month, "Will you accede to a Federation," it was possible next month for this House to alter in some fundamental respects the provisions of the Federation to which the State was held to have acceded. Therefore, some schedule of this kind is necessary. It is a sorting out of the various parts of the Bill which should be capable of amendment without in any sense altering from the point of view of the States the constitutional machinery to which they have acceded. The scheme of the schedule is to set out the provisions of the Act the amendment whereof is not to affect the validity of the Instrument of Accession of a State

"One sees set out those parts of the Bill the amendment of which is not to affect the validity of the Instrument of Accession of a State, and on the opposite side there are set out those subjects the amendment of which, would affect the validity of accession. In drawing up a schedule of this kind one has to proceed with great care in defining what are legitimate matters on which the Rulers of a State are entitled to ask that there shall be no amendment without their consent. Of course there will be borderline cases. There could be minor amendments which would not really make any great difference to the existing position, and it would be very unreasonable if the States took objection to such amendments and said, "We are going to stand on our rights on this point as affecting the validity of our Instrument of Accession." It is right that any matter which really affects what I may call the general balance of powers, the questions of the reservation of subjects of executive control and of matters, which can be dealt with by the Governor-General in his discretion, matters which are vital to the architecture of the Federation to which the States are asked to accede, should not be amended without their assent.

"I will take as examples four cases. The choosing and summoning of Ministers. Clearly that is an important matter. There are certain provisions as to how Ministers are to be chosen and summoned. Clearly it is of the utmost importance to define in any scheme the manner in which Ministers are chosen.

"In regard to peace and tranquillity, one of the chief factors in the Bill is that the Governor-General is enabled to over-ride his Ministers. The procedure in the passing of Bills is not a matter in which one contemplates any particular amendment, unless there be something very unusual in the procedure. It is vital in the constitution that there should be a two-thirds or a three-quarters majority. The whole area of the special powers vested in the Governor-General is one of the essential features of the Federation. That is one part where the States are entitled to say "That is a change" or "That is altered". But this does not in any way check for all time the development of India. These are to be the subject-matter of negotiations with the States, because, in effect, they will produce a federation of a different kind from that to which the State has acceded".—(*Parl. Deb. 201, cols. 942—44*).

Sub-S. (8).—This sub-section must be read with S. 311 (3) under which no Indian State is to be deemed to have become a Federated State until the establishment of the Federation.

Nationality of the Subject of Indian States.—As to the nationality of the subjects of a Federating State, the *Solicitor-General* said: "The whole principle of the Federation, is that the ruler shall remain ruler of his State and his subjects shall therefore remain his subjects, the ruler undertaking to see that the provisions of the Act are enforced in his State. That is clearly the idea and basis of the whole federal proposal. The idea of all the inhabitants of the States becoming British subjects, and, I assume, therefore ceasing to be the subjects of their ruler, is wholly against the basis on which we are proceeding. On the other hand, of course, the question of nationality perhaps most frequently arises when someone wants to go abroad and to have a passport, or has the misfortune to be the subject-matter of an incident in a foreign country in which he desires the protection of the Government of his own country. Of course, as the Crown controls the foreign relations of the States the Crown performs these services for the subjects of the States, that is to say, they get passport from the Crown, and if there were any case in which communications were necessary with a foreign Government in regard to something that had happened or had been done by a subject of the State, that correspondence would take place between the foreign Government, and the Government of India, or, if necessary His Majesty's Government here. They are known as British protected persons for that purpose when they are outside their own territory. Therefore, that side of the matter is already provided for."

Mr. Godfrey Nicholson: "If by any chance the subject of one State got into trouble and committed some crime in another State, would the States be able to appeal to the Federal Government to adjust the difference?"

The Solicitor-General: "I think that would be a matter which would be dealt with through the Viceroy. Presumably the State in which the incident had occurred would communicate with the Viceroy and it would be dealt with normally under the paramountcy powers."—*Parl. Deb. Vol. 298, cols 1159-1162*

CHAPTER II.

THE FEDERAL EXECUTIVE.

The Governor-General.

7. (1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act.

(3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

NOTES.

Parallel references.—This section follows in substance S. 61 of the Commonwealth of Australia Act. Cf. S. 8 Union of S. Africa Act. The British North America Act vests the executive power in the Crown but does not expressly delegate it to the Governor-General. See the observations of Lord Haldane on this point in *Bonanza Creek, etc., v. Rex*, (1916) 1 A.C. 566.

Subject to the provisions of this Act.—It is only subject to the Provisions of this Act, that the Federal legislature may confer powers on subordinate

authorities. For instance powers expressly conferred on the Governor-General by the Act cannot be transferred by the Federal Legislature to subordinate authorities.

Viscount Wolmer: I should like to know whether those words "Nothing in this section . . . subordinate authorities" would empower the Federal Legislature to derogate from the authority or powers conferred upon the Viceroy by this measure.

Sir S. Hoare: The answer to my Noble Friend is that there will be no such power.

Sub-S. (2) carries out the separation between Federal functions as distinguished from the Crown functions emphasised in S. 3.

For the Governor-General's Secretary and staff, see S. 305.

As to the exercise of the executive authority between the dates of the commencement of Provincial autonomy and the inauguration of the Federation, see S. 313.

Extent of executive authority of the Federation. **8. (1)** Subject to the provisions of this Act, the executive authority of the Federation extends—

(a) to the matters with respect to which the Federal Legislature has power to make laws;

(b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas:

Provided that—

(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;

(ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;

(iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a Native of India or of territories adjacent to India; and

(iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

NOTES.

Executive Power of Federation. Sub-S. (1).—Dealing with sub-S. (1), the *Solicitor General* said "The authority that we are dealing with is the executive authority of the Crown so far as it is exercisable in India. The terminology is not unusual. The sub-S. [(1) of S. 7] reads:

"Subject to the provisions of this Act the executive authority of the Federation shall be exercised on behalf of his Majesty by the Governor-General."

"When we come to S. 8, we are dealing with the executive authority of the Federation, which the previous section says shall be exercised on behalf of His Majesty by the Governor-General, and you are simply describing the scope of that particular portion of the executive authority which will be exercised by the Governor-General on behalf of His Majesty according to the provisions of the Act as the executive authority of the Federation. (*Parl Deb. Vol. 298, Col. 1262.*)

Scope of Executive Power. Sub-S. (1) (a).—Generally speaking executive power is derived from legislative power. This is in the main true of federal constitutions with a double enumeration—as in Canada—i.e., where the powers of both the units as well as the federal centre are both enumerated. "Executive power is in many situations that arise under the statutory constitution of Canada conferred by implication in the grant of legislative power," Lord Haldane in *Bonanza Creek Gold Mining Co. v. Rex*, (1916) 1 A.C. 566 at p. 580, S. 8 (1) expressly so enacts.

A difficulty is however created by the 'triple enumeration' of powers in this Act. In the case of the subjects enumerated in list III in respect of which also the Federal Legislature has power to make laws where does the executive power reside? In Australia, where the main enumeration is of the concurrent powers, (S. 51, Commonwealth of Australia Act), it has been held to reside in the States until the legislative power of the Commonwealth is exercised. That is mainly based on the underlying principle of the distribution of powers adopted there, that all residuary powers are vested in the States; and this would certainly not be correct with regard to the scheme of this Act. The answer is to be found in proviso (i) which expressly states that the executive power of the Federation does not extend in any Province to matters with respect to which the Provincial legislature may have power to make laws, i.e., it does not apply in Governor's Provinces to concurrent subjects as specially provided for. See S. 126 (2).

Sub-S. (1) (b)—This sub-section has to be read with S. 11 which reserves the department of defence, and tribal areas and therefore though these subjects are within the ambit of the Federal Government and are Federal Subjects are reserved to the Governor General. Sir S. Hoare explained the position thus: "This is simply the constitutional method of expressing the position which has been accepted by everybody, namely, that while defence is a federal subject, as indeed it must be, defence under this Statute, directly and indirectly, is reserved to the Crown".

Proviso I. Federal executive power in Provinces—See for instance S. 102, empowering the Federal Legislature to legislate on Provincial Subjects for Provinces in an emergency, S. 103—Legislation by consent and S. 106 legislation to give effect to international agreements. S. 126 (2)—Power to give directions in respect of matters in the concurrent List II.

Proviso II.—Paramountcy is outside the executive power of the Federation. In so far as States which enter the Federation cede to the Federal legislature the power to legislate on certain matters, the executive power of the Federation will be applicable in those States. To that extent the Crown's prerogative or treaty power of acting in the field of paramountcy is cut down, but beyond it the rights of the Crown stand unaffected. The position has thus been explained by the Secretary of State.

"Paramountcy is the term commonly used to describe the powers of the Crown in its relation to the States. The Crown is bound by engagements of great variety, only some 30 of them however, being treaties with the Indian States. The nature of the undertaking has varied with the circumstances in which the relationship arose. A common feature of great significance is that the Crown accepted responsibility for the States' external relations and their internal and external defence. These contractual obligations embodied in the treaties have, with the growth of the Crown's authority throughout India, been supplemented by usage and by the course of events. The Crown's suzerainty has been established for generations. When the Crown took over direct authority in India from the East India Company, Lord Canning made the following pronouncements:

"The Crown of England stands forth the unquestioned ruler and paramount power in all India There is a reality in the suzerainty of the Sovereign of England which has never existed before and which is not only felt but eagerly acknowledged by the Chiefs."

"I quote a second pronouncement which has an important bearing on the question, and which illustrates some of the applications of paramountcy. I take Lord Minto's statement in 1909:

"Our policy is with rare exceptions one of non-interference in the internal affairs of Native States. But in guaranteeing their internal independence and in undertaking their protection against external aggression, it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their administration and would not consent to incur the reproach of being an indirect instrument of misrule. There are also certain matters in which it is necessary for the Government of India to safeguard the interests of

the community as a whole, as well as those of the paramount power, such as railways, telegraphs and other services of an Imperial character. But the relationship of the supreme Government to the States is one of suzerainty."

"These latter matters, railways, telegraphs and so on, mentioned by Lord Minto will now come within the Federal purview and, if a State accedes to the Federation, paramountcy will not be applicable to that extent; paramountcy will to that extent be limited. This is where paramountcy is directly affected by our deliberations. In other respects, whether a State federates or not, paramountcy must remain a fact affecting its relationship to the Crown"—(*Parl. Deb. Vol. 299, Col. 1235.*)

"Territories adjacent to India": Sub-S. (1) Proviso III.—*Mr Butler*: "The intention of the sub-section is to exclude the enlistment of foreigners except as regards subjects of Indian States which are included in the term "native of India," and Gurkhas who are included under the term "territories adjacent to India." (*Parl. Deb. Vol. 299, Col. 1259.*)

Federal Executive authority in Indian States: Sub-S. (2) is really in the nature of a proviso to Proviso II of Sub-S. (1).

"The executive authority of the Federation depends upon the items in the legislative list. Some apprehension was felt that the State, by acceding in respect to a published subject, it might entitle the Federal Executive authority to start interfering in the State, although no Federal Law had been passed dealing with that subject. It was never intended that that should be the result and indeed it is necessary that the executive authority of the State should continue to function in order to deal with the matter. This sub-section is intended to make it clear that the executive authority has no power until a law is passed entitling it to deal with it. (*Par. Deb. Vol. 302, Col. 625.*) Cf. S. 128 (1).

Administration of Federal Affairs.

9. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

NOTES.

Basis of the Section.—Broadly speaking the basis of the Bill is that the executive authority of the Federation is in the Governor-General. Therefore, executive acts are the Governor-General's acts, and in the absence of any specific words he, of course, acts on the advice of Ministers. [See Para. IX, draft Instrument of Instructions.] If the words, "in his individual judgment," are inserted, they are inserted in respect of matters, which are within the ministerial sphere, where however the Governor-General has a special responsibility. The Governor-General is required to exercise his functions at his discretion in fields which are outside the sphere of ministerial responsibility. *Parl. Deb. Vol. No. 301, Col. 1619.*

The Council of ministers are to aid and advise the Governor-General. The Government of India Act 1919, S. 52 (3) enacted that the Governor shall be *guided* by the advice of his ministers unless he sees sufficient cause to dissent from their opinion—thus reproducing in terms Clause VI of the Instrument of Instructions to the Governor of New South Wales and other Australian States. The obligation

to be guided by the advice of the ministers is now enforced by the Instrument of Instructions issued to the Governor-General and the Governors (Cl. IX) and his power to dissent from the advice of the ministers is specifically restricted to the special responsibilities enumerated in the Act and to the other cases where he is by the Act expressly directed to act in the exercise of his individual judgment.

The Draft Instrument of Instructions Para IX, runs as follows:—

"IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own

In his discretion and In his individual judgment—Matters in his discretion are those which the Governor-General is not under any constitutional obligation to seek ministerial advice. These relate mostly to the powers of the Governor-General as regards the three reserved departments specified in S. 11 and certain functions such as:

- (1) The power to dissolve, prorogue and summon the legislature; including the power to summon joint Sessions in the event of disagreement between the two chambers.
- (2) The power to appoint and dismiss ministers.
- (3) The power to assent to, withhold assent from Bills or to reserve them for the signification of His Majesty's pleasure.
- (4) The grant of previous sanction to the introduction of a certain class of legislative measures.
- (5) Administration of British Baluchistan, Andamans, Nicobar Islands.

Notwithstanding that constitutionally ministers have no right to tender advice in respect of such discretionary matters, the Governor-General is directed by the Instrument of Instructions to encourage the practice of joint consultation between himself his counsellors and ministers.

The Draft Instrument of Instructions Para XVII runs as follows:—

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

Mr Herbert Williams asked I gather that when the Governor-General acts in his discretion it is a case where he acts without being under the obligation of consulting his ministers at all, and that he acts perfectly freely. On the other hand, when he exercises his individual judgment, that is a case where he consults his ministers but is not obliged to take their advice and, therefore, his final decision may or may not disagree with the advice tendered to him by his ministers. The answer was:— "Quite clearly in this clause we are setting up a system which is not the same as the system that prevails here. Where there is a relationship between the Sovereign and the Ministers here, the Sovereign acts on the advice of his Ministers, that is to say, the Sovereign does not act in his discretion and does not exercise his individual judgment so far as constitutional issues are concerned. But, under the Constitution we are building up, there are three ways, apparently in which the Governor-General may act. First of all, there are cases described in the measure where he makes his own decision, subject only, of course to the

provisions of any Instrument of Instructions issued to the Governor-General as provided in Cl. 13, but, subject to that limitation, at least so far as ministers are concerned, it does not matter to them what his relationships may be with the Secretary of State when he is acting in his own discretion. That is the first case where he acts without reference to the ministers at all. The next case is where he asks his ministers for their views, and, having obtained them, he then takes his own decision, again, however, as I understand, subject to the provisions of Cl. 14. Finally, there is the case where, presumably, under the Bill the ministers who are appointed, as will be seen in sub-S. (1), not merely to aid him, but to advise him. In those cases they are entitled to tender advice, as ministers here tender advice to the Sovereign and in that case the Governor-General is bound to take their advice, subject however, of course, to the provisions of Cl. 12, where the question of the special responsibilities of the Governor-General arise (*Parl. Deb. Vol. 298, Col. 1328*).

The Solicitor General: "The words "individual judgment" are used in relation to actions by the Governor-General on his individual judgment in the ordinary sense of the word within the ambit, in which normally he would be acting on the advice of his Ministers. If within that ambit it is sought to give the Governor-General special powers or responsibilities, then the words "individual judgment" are used. They are defined in Cl. 12. The words "in his discretion" are used where the Governor-General will be acting on his own judgment but in an area outside that field. For example, in Cl. 11 the functions of the Governor-General in respect of defence are to be exercised by him in his discretion.... My Honourable friend asked one further point whether when the words "individual judgment" are used the Governor-General can act without consulting his Ministers. The answer is that as quite obviously that action is in the field where normally he would be acting on the advice of his Ministers, no cleavage between them as to right of action can possibly have arisen, except of course as a result of something that has happened and has been discussed; but, of course, once he had decided that within that field action must be taken, he would take it. Take quite an impossible case. Suppose that Ministers simply do not turn up. Then, of course, he must take the action in order to carry out the obligations conferred upon him. I do not think that the sort of test of consultation or non-consultation is really the clue to the meaning. The clue is that the words "individual judgment" are used in respect of powers within the area in which normally in ordinary times he would be acting on the advice of his Ministers. The words "in his own discretion" are used in respect of powers and functions outside that area." (*Parl. Deb. Vol. 298, Cols. 1335-36*).

Sub.S. (3).—*Mr. Butler* "The Sub-section is vital to the scheme on which the powers of the Governor-General and the relation of his ministers is built up. It enables him to decide finally whether a particular question falls within his discretionary powers, and prevents questions being raised in the courts or otherwise as to whether he has or has not exercised his discretion and his individual judgment in any case. It is essential in these matters of the relationship of the Governor-General to his Ministers that the discretion in these matters should rest with the Governor-General himself; otherwise, there would be great opportunities for confusion as to whether they fall within a reserved department or within his special responsibilities." (*Parl. Deb. Vol. 298, Cols. 1332-33*).

The remedies in case of conflicts between the Governor-General and his ministers as to the matters mentioned herein would appear to be three.

(1) Reference to the Federal Court under S. 213: Can the Governor-General consult the Federal Court under S. 213, whether any particular matter falls within his 'discretion' or justified the exercise of his 'individual judgment'. The Attorney General answered 'yes' to a question from Sir Stafford Cripps, and added:—

"I can understand that if a discussion arose between ministers and the Governor-General as to whether a particular matter came within the Governor-General's discretion or within his powers of acting on the advice of his Ministers, it would be a matter of vital public importance. One would assume that the Governor-General has the power, if he wishes, under S. 213 to refer the matter, as to whether it was within his discretion or not to the Federal Court. That may provide a safety valve on matters of dispute between the two." But of course the reference can only be at the instance of the Governor-General. (*Parl. Deb. Vol. 298, Col. 1331*).

(2) The matter may also be referred to the Privy Council under S. 4 of the Judicial Committee Act 1833.

(3) An appeal to the Secretary of State who might under S. 14 give the Governor-General directions in regard to the matter.

The Governor-General being responsible to the Secretary of State in respect of matters within his discretion, and where he exercises his individual judgment the action of the Governor-General in those matters can be called in question in Parliament.

10. (1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

Other provisions as to ministers.

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

NOTES.

Sub-S. (1).—This follows the usual form adopted in the Dominion constitutions. See S. 11, British North America Act. S. 62 Commonwealth of Australia Act, S. 12 Union of South Africa Act. In the Irish Free State the appointment is in form by the Governor-General but he has to appoint the nominees of the President of the Executive Council. Art. 51. The manner in which the Governor-General is to choose his ministers is contained in para. VIII of the draft Instrument of Instructions which runs as follows:

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

Sub-S. (2).—The Constitution Acts of South Africa (S. 14) and of the Australian Commonwealth (S. 64) contain similar provisions, with the period of 3 months instead of six as here. The Irish Free State Act, [S. 52] requires that ministers should be members of the legislature.

Explaining the reasons which led Government to recommend the sub-section,

Sir S. Hoare said: "It is a question which has been considered time after time. First of all there was the Statutory Commission. They considered a variety of alternatives for a non-Parliamentary Minister. They considered the possibility of having a Minister of this kind, and then considered the more general proposition and made a very tentative suggestion that where the other Ministers wished for a Minister of this kind such a Minister might be appointed, leaving it optional and dependent upon the desire of the other Ministers.

"Then followed discussions with the Indians at the Round Table Conference and we found that rightly or wrongly every Indian—I do not think there was a single Indian of a contrary opinion—was violently against this proposition. They were violently against it because they thought that it was the thin end of the wedge for reintroducing the official block. That may be good reason or it may be a bad reason, but it certainly was a very strong reason in the minds of the Indian delegates. Then came the Joint Select Committee. They considered this question. We considered all the kind of issues that have been raised by hon. friend the Member

for Altrincham (Sir E. Grigg). It is disclosing no confidence when I say that a good many members of the Committee at one time were attracted towards the proposal, and I was instructed to make inquiries from the Government of India and from the Provincial Governments as to their views on the question. Every one of those Governments, the Government of India and every single one of the Provincial Governments were against it.

"They said, 'It will not work unless it has the approval of the Ministry. You will never have the approval of the Ministry because we, the Government of India, and we, the Provincial Governments, do not contemplate any possibility of an Indian Ministry ever agreeing to a Minister of that kind'. Having regard to those very strong views, the Joint Select Committee came to the conclusion that it was not worth while pressing a proposition that certainly was not going to be accepted and that was not going to work. More so, because I believe that under the provisions of the Bill and under the Joint Select Committee we seek to meet almost all the contingencies to which allusion has been made in the course of this Debate, and we meet them in the Federal Centre. It is with the Federal Centre that we are now dealing

"In the Federal Centre there is a Second Chamber. In that Chamber there are a number of nominated members. It is possible for the Governor-General, if need be, to use one of his nominations for an appointment of this kind. I suggest that to the Committee as much the best way to meet a case in which the Governor-General and the Ministers require the services of someone who is not already a member of the Federal Assembly. By that method you will be achieving the end which I believe is in the minds of a good many hon. Members this afternoon, and you will not be raising an unnecessary issue that will set against you, quite needlessly, large bodies of political opinion in India. For these reasons I suggest to the Committee that this is not a great question with issues of principle at stake. A minister has a period of six months before he need become a member of one or other of the Chambers. In the case of the Federal Legislature if he fails to obtain a seat in the Assembly or if he does not wish to stand for the Assembly he can obtain a nomination for a nominated seat in the Second Chamber. That being so, it is better to follow the advice, reached after a long period of investigation, of the Joint Select Committee and not to adopt a proposal, however attractive it may be at first sight, which certainly would not work but would undoubtedly raise up against it great bodies of Indian political opinion." (*Parl. Deb., Vol. 298, Cols 1376-78.*)

Sub-S. (3)—The proviso is intended to prevent the legislature compelling resignation of ministers by refusing their salaries. This is a natural corollary of the provision that ministers hold office at the pleasure of the Governor-General in his discretion (Sub-S. (5)).

Sub-S. (4)—As the duty of the Governor-General to be 'guided' by the advice of the Ministers is not statutory but is only a direction of the Instrument of Instructions, and as the validity of anything done by the Governor-General shall not be called in question, (including a court), on the ground that it was done otherwise than in accordance with the Instrument of Instructions issued to him. (S. 13 (2)), it necessarily follows that the advice tendered by a minister cannot be relevant in any enquiry as to the validity of the Governor-General's Act.

Sub-S. (5)—Though the functions of the Governor-General in respect of choosing the ministers is to be exercised in his discretion, the Instrument of Instructions para VIII, directs him to use his best endeavour to select his ministers in consultation with the person who in his judgment is most likely to command a stable majority in the legislature, those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting he is to bear constantly in mind the need for fostering a sense of joint responsibility among his ministers;

The Act makes no provision for resignation by Ministers, but they can of course terminate their office by tendering their resignation to the Governor-General.

11. (1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's Dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

Provisions as to defence, ecclesiastical affairs, external affairs and the tribal areas.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

NOTES.

S. 11.—*Cf.* the constitution for Malta under the Letters Patent of 14th April, 1921, whereunder matters touching the public safety and defence of the Empire, and the general interests of British subjects not resident in Malta or of subjects in Malta if emergency endangers peace, order or good government of the territory are excluded from the competence of the Legislature. Further, specific exclusions include all naval, military and air defence matters, cables, wireless etc., for defence and imperial purposes, imports for the defence forces, etc. *See Hals. Vol. XI, p. 136, et seq.*

The reservation of the administration of these three departments in the hands of the Governor-General acting in his discretion, withholding them from the domain of ministerial responsibility, creates a sort of dyarchy and constitutes the most serious infraction of responsibility at the centre.

"Although the Reserved Departments will be administered by the Governor-General on his sole responsibility, it would be impossible in practice for the Governor-General to conduct the affairs of these departments in isolation from the other activities of his Government and undesirable that he should attempt to do so, even if it were in fact possible. A prudent Governor-General would therefore keep his ministers and the advisers whom he has selected to assist him in the Reserved Departments in the closest contact and without blurring the line which will necessarily divide on the one hand his personal responsibility for the Reserved Departments, and, on the other hand, the responsibility of Ministers to the Legislature for the matters entrusted to their charge, he would so arrange the conduct of executive business that he himself, his Counsellors and his responsible Ministers, are given the fullest opportunity of mutual consultation and discussion of all matters—and there will necessarily be many such—which call for co-ordination of policy. His Majesty's Government intend to secure the embodiment of this principle in appropriate terms in the Governor-General's Instrument of Instructions." (*White Paper Proposals, Para 23.*)

The draft Instrument of Instructions accordingly provides: (Para XVII): "And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our Will in especial that our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the view of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces."

Defence.—Use of Indian Troops outside India: Sir S. Hoare, said —

"The question is as follows. In the event of Indian troops being used outside India, should their use only be upon the advice of the Indian ministers, or should it be at the discretion of the Governor-General and not on the advice of the Indian ministers? Within that question there is another question. Supposing the troops are being used outside India not for the defence of India but for some Imperial purpose, should a distinction be drawn between that issue and the issue in which Indian troops are used outside India for Indian defence? In the case where Indian troops are used for Indian defence outside India, I do not think there is likely to be any question arising at all. It must be at the discretion of the Governor-General, who is responsible for the reserved Department of Indian Defence. A more difficult issue arises in the event of Indian troops being used outside India for purposes other than the purposes of Indian defence.

"As to the second case, will the Committee first of all remove from their minds the doubt which arose when the Hon. Member was speaking about the cost? There is no question about the cost. The cost will not fall upon Indian revenues at all. In a case of that kind the whole cost would fall upon British revenues. If we used Indian units for a purpose of that kind British revenues would find the money. There is, therefore, no question of cost at all. The question the Committee have to consider is: Should this use of Indian troops be made only upon the advice of Indian ministers?

Mr. Jones.—In such a case would British revenues find the pay and the cost of transport?

Sir S. Hoare.—The full cost. While the units were being used for this purpose their cost would fall upon British revenues. The question I was putting to the Committee was: Should this be upon the advice of the Indian ministers or at the discretion of the Governor-General? The Joint Select Committee considered the issue, and I think many of us were anxious, if we could, to find a distinction between the two contingencies, but we came to the view that it was impossible to draw a statutory distinction between two contingencies, and for this reason. If it is accepted that Indian troops can only be used outside India for purposes other than the purposes of Indian defence upon the advice only of an Indian ministry, then we should have to define in the Bill what is meant by "the defence of India", and that is almost an impossible proposition. Obviously "the defence of India" means something much more than holding the North-West Frontier. That being so, facing the impossibility of making this statutory definition, the Joint Select Committee came to the view—I think, on the whole, rightly—that the decision must in each case be taken by the Governor-General at his discretion, and after consultation with the Federal Ministers. I cannot contemplate any single case in which the Governor-General, using troops outside India for purposes other than the defence of India, could possibly ignore the view of his federal ministry."

The draft of the Instrument of Instructions contains a clause directing the Governor-General to consult his Ministers as to the employment of Indian troops outside India. See in this connection S. 150 of the Act.

The relative portion of para. XVII of the draft Instrument of Instructions is as follows:—

XVII. ... Our Governor-General shall bear in mind the desirability of ascertaining the view of his Ministers when he shall have occasion to consider matters relating to general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

External Affairs.—Defence is the primary reserved subject. As such 'external affairs' is a subject which vitally impinges on defence. But though the entire department of external affairs is reserved, it is not intended that the negotiation and conclusion of commercial treaties should be effected without reference to the Ministers. Speaking on this subject *Mr. Butler* said:

"I would like to assure the Committee that there is no intention of taking out of the realm of those affairs which are controlled by Ministers, and not by counsellors, the negotiation of commercial agreements. I think the matter was put most clearly in the Report of the Joint Select Committee, in the paragraph to which I have previously referred. There they say:

"In the United Kingdom, however, all agreements with foreign countries are made through the Foreign Office. Any other arrangement would lead to grave inconvenience; but when a trade or commercial agreement is negotiated, the Foreign Office consult and co-operate with the Board of Trade, whose officials necessarily take part in any discussions which precede the agreement. We assume that similar arrangements will be adopted in India, and that the Department of External Affairs will maintain a close contact with the Department of Trade or Commerce; but we are clear that agreements of any kind with a Foreign country must be made by the Governor-General, even if on the merits of a trade or commercial issue he is guided by the advice of the appropriate Minister". I do not think that any words of mine could improve or clarify that statement as to the future and without attempting, what I believe no constitutional lawyer would attempt, to define it any more clearly. I would remind the Committee that there is no intention of reserving to the Governor-General the negotiation of commercial agreements" (*Parl. Deb. Vol. 298, Cols. 1411-12.*)

It would seem that a similar rule would apply to the selection of India's representative on the League of Nations.

It will be noticed that 'external affairs' do not comprehend the relations between the Federation and any part of his Majesty's Dominions—which would be within the competence of the Ministers.

Ecclesiastical Affairs.—"Ever since the East India Company first went to India there has always been a provision for the chaplains of any British Army in India and any British religious services in India. It has always been recognised by every succeeding Government that it was an obligation upon us not only to provide the proper material conditions for the Army and the services in India, but also to provide them with adequate spiritual ministrations. Speaking generally, the position to-day is that the expenditure of the ecclesiastical department covers, first, the chaplains for the Army, and, secondly, the chaplains for the services where the services need

spiritual ministrations. There was the question whether, that being so, it was necessary to have a separate reservation of the ecclesiastical department, whether it could not be regarded as one of the branches either of the reserved defence department, or as part of the Army and the money voted for the service. On the whole we thought it was better to deal with the ecclesiastical department as it is dealt with in the Bill. We have always made it clear that we did not contemplate the ecclesiastical department going over a wider field than we have described, namely, speaking generally, ministrations for the services and for the Army, and in order to show that that is our view in S. 33, sub-S. (3, e), we give the limit of money that can be expended in the Department. We say that it shall not exceed 42 lakhs of rupees. As far as we can judge the expenditure is likely to fall rather than rise, and in any case it will not exceed that amount." (*Parl. Deb. Vol. 298, Col. 1389*)

Tribal Areas.—"Means the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Foreign State". S. 311 (1).

The reservation of this subject is explicable on two grounds.

1. That the area in question is not part of British India.
2. That from their situation the safety and administration of these areas are vitally related to the reserved subject of defence, in fact the area, where that subject would be in almost continuous operation.

Special responsibilities of Governor General.

12. (1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) the securing to and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

(e) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation;

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

NOTES.

Section 12; Sub-S. (1): General—"Special Responsibilities."—Speaking of Special Responsibilities, the White Paper stated: "They represent on the contrary (to quote a very imperfect but significant analogy) a retention of power as substantial, and as fully endorsed by the law, as that vested

by the constitution of the United States in the President as Commander-in-Chief of the Army—but more extensive both in respect of their scope and in respect of the circumstances in which they can be brought into play. On the other hand, they are not only not inconsistent with some form of responsible Government, but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which it could have little or no hope of success." (*White Paper Proposals, para 21.*)

"It is desirable to explain the precise effect which is contemplated as the result of imposing upon the Governor-General these "special responsibilities". In the first place, it should be made clear that unless and until the Governor-General feels called upon to differ from his Ministers in the discharge of a "special responsibility", the responsibility of Ministers for the matters committed to their charge remains complete. To take a concrete instance, it will clearly be the duty of Ministers, rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment. The intention of attributing to the Governor-General a special responsibility for the protection of minorities is to enable him, in any case where he regards the proposals of the Minister in charge of a department as likely to be unfair or prejudicial to a particular minority, in the last resort to inform the Minister concerned (or the Ministers as a body, if they generally support the proposals of their colleague,) that he will be unable to accept the advice tendered to him. Nor is it contemplated that the Governor-General, having been vested with "special responsibilities" of the kind indicated, will find it necessary to be constantly overruling his Ministers' advice. The present proposals in general necessarily proceed on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise. In the great bulk of cases, therefore, in day-to-day administration, where questions might arise affecting the Governor-General's "special responsibilities" mutual consultation should result in agreement, so that no question would arise of bringing the Governor-General's powers in connection with his special responsibilities into play" (*White Paper Proposals, para 26.*)

The draft Instrument of Instructions 1935, para. IX provides. "In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own."

Sub-S (1) (a): Peace and Tranquillity.—This was a 'special responsibility' even under the Act of 1919 S. 41 (2) in respect of which the Governor-General could in the terminology employed by this Act in the 'exercise of his individual judgment'. In fact this was the only ground on which the Governor-General could overrule his Executive Council. The Joint Parliamentary Committees derive this 'responsibility' from the Governor-General's exclusive responsibility for the defence of India.

The Instrument of Instructions does not specifically define the scope of this 'special responsibility.'

Sub-S. (1) (b): Financial Stability and Credit.

The white paper thus describes the scope of this responsibility:

"The object of the Governor-General's special responsibility for "the safeguarding of the financial stability and credit of the Federation" is to confer on him powers to step in, if the need should arise, in the event of the policy of his Ministers in respect, for example, of budgeting or borrowing being such as to be likely in the Governor-General's opinion to endanger seriously the provision of resources to meet the requirements of his Reserved Departments or any of the obligations of the Federation, whether directly, or indirectly by prejudicing India's credit in the money-markets of the world. The definition of this special responsi-

bility is drawn in somewhat wide terms not in order to diminish the field of responsibility of the Ministers, but owing to the difficulty of giving a detailed specification of financial operations or measures which might on occasion endanger stability and call for the use of the Governor-General's powers. (*White Paper Proposals, para 31.*)

Explaining the ratio of this special responsibility the Joint Parliamentary Committee say: "Federal Ministers will become responsible for finance but it recognised to be a fundamental condition of the success of the new constitution that no room should be left for doubts as to the ability of India to maintain her financial stability and credit both at home and abroad and it is therefore necessary to reserve to the Governor-General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would seriously prejudice India's credit in the money markets of the world. To this we might add that grave responsibility which would attach to the Governor-General in the matter of defence afford a further and no less cogent reason." A further reason is the obligation cast on the Federation for the payment of the pensions of persons recruited by the Secretary of State, in respect of which India has to remit to England annually about 4 million pounds. See special responsibility in Cl. (d). With respect to this responsibility the draft Instrument of Instructions 1935 para X provides.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

Sub-S (1) (c).—Minorities.—Who are the minorities to be protected?

On this subject Sir S. Hoare said: "I come to the wider question raised by the right hon. and gallant Member; his proposal to extend the protection of minorities to political minorities. I feel sure that the more hon. Members think about this proposition the more impossible they will find it to be in practice. Obviously, it would strike at the root of representative Government both in the Centre and in the Provinces if the Governor-General and the Governors were expected to intervene and set aside the decision of a majority on one day and put in its place a decision of the minority. Further, it would put the Governor-General in an almost impossible position. What is the minority to-day may be the majority to-morrow. The Governor-General would thus be in this position. In the first place, it would be impossible to carry it out, and, if he could carry it out it would strike at the root of representative institutions in the Centre and in the Provinces and would do the very thing we wish to avoid namely, encourage irresponsibility in the Federal Legislature and in the Federal Executive. In this case, when dealing with the minorities, we mean, first of all, the six minorities which have always been regarded as minorities in the phraseology we use, and, in the second place, we mean the backward races and backward communities, which for one reason or another cannot pull their weight under representative institutions. Those are the minorities we have in mind. We deal with them in the general phrase that the Governor-General must have latitude in his interpretation of his responsibilities, but we explain the way in which he is to exercise his responsibilities in the Instrument of Instructions, where we follow exactly the recommendations of the Joint Select Committee as set out in paragraph 79. Let me remind the Committee of the effective words in that paragraph:

"Nor do we think that any good purpose would be served by attempting to give a legal definition of 'minorities', the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and more important minorities in whose interests the Governor's powers will usually be invoked; but there are certainly other well-defined sections of the population who may from time to time require protection, and we can see no justification for defining the expression for the purpose of excluding them. We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. Nevertheless to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plain, and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform merely because it is resisted by a group of persons who might claim to be regarded as a minority." (*Parl. Deb. Vol. 298, Cols. 1815-16.*)

Accordingly para. XI of the draft Instrument of Instructions provides "Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority."

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public."

Sub-S. (1) (d).—Note the use of the expression "who are or have been" in the public services and "to and to the dependants of persons", etc.—which are intended to cover cases of pensions to officials and their dependants.

The ultimate control of all services is by reason of this safeguard vested in the Governor-General in his individual judgment and therefore virtually by reason of S. 14 in the Secretary of State.

Sub-S. (1) (e).—These relate to discriminatory legislation in regard to trade and the professions against persons natural or artificial, domiciled in the United Kingdom. The draft Instruments of Instructions of 1935. Para. XIII deals with this topic and prescribes how the power under this sub-clause should be exercised.

"XIII. The special responsibility of Our Governor-General for securing in the sphere of executive action any of the purposes, which the provisions of Chapter III of Part V (which deals with discrimination) of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act."

Sub-S. (1) (f).—These relate to the protection of the goods only of the United Kingdom not of the Colonies or dependencies of the United Kingdom in respect of which the Federal Legislature and the Federal Ministry might take action of the sort hereunder prohibited if such a course of action is warranted or required by the circumstances of the case. The manner in which this "Special responsibility" should be exercised is set out in para. XIV of the draft Instrument of Instructions 1935:

"XIV. In the discharge of his special responsibility for the prevention of measure which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only, if in his opinion, the main intention of the policy contemplated is, by trade restrictions to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products: and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted

and the mutual obligations which arise therefrom." In a situation such as a general boycott of British goods executive action, it would seem, could be taken under the power conferred by this clause.

Dealing with the matters dealt with in sub-cl. (e) & (f).

Sir S. Hoare said.

"The position is that British trade with India is so extensive, and has existed for so many generations and has conferred so many benefits on India, that it has undoubtedly claimed special treatment. The basis of our proposal is this long partnership between British and Indian trade. That is the justification for the special safeguards that we propose for British trade, namely, no discrimination and reciprocity of treatment. The justification for this provision is this partnership between Great Britain and India, the immense extent of British trade with India and the interests that have grown up as a result of them." *Parl. Deb. Vol. 298, Col. 1835*

Sub-S (1) (g).—Explaining the grounds for this safeguard the Solicitor-General said.

"The position of the Princes as it has grown up under our rule in British India and our relations with the Princes are matters which we think should be placed within the scope of this special responsibility. There are certain rights and privileges which the Rulers have connected with guards, salutes and so on which it is intended should be subject to this special safeguard. The whole matter has grown up out of the relationships of States and their independent Rulers and the Crown and these rights and privileges which the Crown has granted in the past should be within the scope of this special responsibility."

"The kind of dignities we have in mind are such as these: the exemption of Princes from arrest in a civil suit under the Civil Procedure Code. This is a privilege that has always been possessed by the Princes in India and which has always been accepted, so far as I know, by everybody. Then again, the Customs privileges exist. There are also the privileges which the Princes have of having their guards and escorts. Privileges of that kind have always existed, and so far as I know no substantial criticism has ever been made against them. And these privileges have always been assumed to be comprehended in the term "rights of the States". (*Parl. Deb. Vol. 302, Cols. 629-630*).

Para XV of the draft Instrument of Instructions, 1935 defines the scope of this safeguard. "XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised*, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects."

Sub-S (1) (h) is merely an ancillary provision. See for an instance S. 126 (3).

Sub-S. (2): Individual Judgment.—The Governor-General can override his minister or ministers and direct that action be taken in accordance with his orders.

13. (1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

*The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

NOTES.

Instrument of Instructions.

S. 13.—In the British Empire, historically the Instrument of Instructions has been one of the weapons by which constitutional advance has been obtained. (*Parl. Deb. Vol. 302, Col. 630*).

But hitherto the usual practice has been for His Majesty in the exercise of his executive power issuing instructions and amending 'the same'. Explaining the departure in the practice. *Sir S. Hoare*, said:—

"In proposing this procedure we were not thinking of the safeguard of the House of Lords but of the great importance of the Instrument of Instructions. We are making use of the Instruments of Instructions as the medium of directions, very wide in character, and it seemed inevitable that there should be Parliamentary sanction behind them. Indeed, Parliamentary sanction was demanded just as much by Indians themselves as by Members of this House or another place. I cannot conceive that the minority communities would be prepared to allow the Instrument of Instructions, under which directions are given to the Governor-General and Governors as to their treatment of minorities, to be altered without Parliamentary sanction." (*Parl. Deb. Vol. 302, col. 631*).

Sub-S. (1).—*Sir S. Hoare*: "The Instrument of Instructions is in draft because it is a prerogative document issued by the Crown, and this and another place must therefore describe the document that they have before them as "the draft" even though in actual practice it may be the final form. There is, therefore, if I may say so to the Honourable Member, no substance in that point. The bigger point is as to whether the Instrument of Instructions and future amendment should be subject to Parliamentary sanction or not. It is a point which we have touched on more than once before and I submit that in the case of a type of document as important as this Instrument of Instructions obviously is, there should be the safeguard of Parliamentary sanction.

"Obviously, from the speech to which we have just listened, there is in the minds of honourable Members opposite the possibility of making drastic alterations, and if that be so, surely there should be parliamentary sanction behind them. Changes as big as that ought to be undertaken only by the medium of an amending Bill or by formal resolution of both Houses of Parliament. Indeed, it is interesting to remember that more than once the Select Committee attached importance to the safeguard of Parliamentary sanction, for the reason that in these Instructions there are several paragraphs—the paragraph, for instance, about the gradual development of responsible government and the paragraph about the Indianisation of the army that are regarded as most important from the Indian point of view; and so far as I can remember it was *Sir Tej Bahadur Sapru* who himself originally suggested, in view of the importance of the Instrument of Instructions, that there should be Parliamentary sanction behind it". (*Par. Deb. Vol. 298, col. 1889-90*).

There are obvious limitations on Parliament's right to vary the Instrument. For instance, Parliament might make consultations by the Governor-General with the ministers compulsory even in the reserved department or in respect of those matters which are left to the Governor-General in his discretion. But of course that is the limit to which Parliament itself can go, for to instruct the Governor-General to be guided by the advice of the ministers in such a field also would run counter to the terms of the Act, and Parliament itself cannot amend the Act to that effect without affecting the Instrument of Accession. See S. 6 (5), and Sch. II.

(2) If the Governor-General contravenes the Instrument the only appeal is to the Secretary of State; the matter cannot be canvassed in Courts.

The Instrument of Instructions is in reality the key to the understanding and working of the Act—that which determines the content of the forms prescribed by the statute. Following Dominion Constitutions, the Act vests the executive power of the Federation in the Governor-General but his constitutional obligation to be guided by ministers responsible to the legislature is expressly laid down by the Instrument.

The enactment of the 'special responsibilities' as the subjects in respect of which the Governor-General could dissent from his ministers and direct that action be taken in accordance with his decision, if it tends to define, serves also to emphasise the powers of the Governor-General to disregard the advice of his ministers. It is the office of the Instrument of Instructions to define with precision the scope of each of these 'safeguards' or 'special responsibilities' and to designate the occasions for the interference. That indicates the importance of the Instrument of Instructions in the mechanism of the constitution.

The Instrument of Instructions of the Governor-General issued in March, 1937, just before the inauguration of the Constitution concerns itself only with the exercise of the Powers of the Governor-General during the transition period governed by Part XIII of the Act. The draft of the Instrument of Instructions presented to Parliament in February, 1935, (*Command Paper 4805*) by the Secretary of State will be found *infra*.

See further Notes to S. 53.

14. (1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

NOTES.

S. 14.—*The white paper proposed*: "In so far as the Governor-General or a Governor is not advised by Ministers, the general requirements of constitutional theory necessitate that he should be responsible to His Majesty's Government and Parliament for any action he may take, and that the Constitution should make this position clear. In the case of a Governor the chain of responsibility must necessarily include the Governor-General." (*White Paper proposals para. 43*).

This corresponds to S. 33 of the Government of India Act, 1919.

Financial adviser 15. (1) The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine.

(4) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

NOTES.

Financial Adviser.—Finance is not a reserved subject but is within the field of ministerial responsibility. But as the Governor-General has a special responsibility to safeguard the financial stability and credit of the Federation, machinery had to be devised effectively to enable the Governor-General to exercise his 'special responsibility'. The 'financial adviser' is the mechanism so devised. The Financial adviser does not supersede the Finance-minister—but his aid and advice is available to the latter.

Dealing with the position of the Financial adviser *quoad* the Ministers and his appointment, Sir S. Hoare said:

"It would in my view, be a great mistake for the Governor-General not to consult the Federal Ministers in an appointment of this kind. The ultimate appointment rests with him. There is no question of that at all, but it must be remembered that the financial adviser is intended to be something much more than a watch dog upon the Federal Ministers. I hope very much that he will be in the closest possible contact with them, and he will be helping them with his advice, given them of course, of their own will, for he will have no statutory authority to tender advice. It is very desirable to have a man who is accessible to both sides in the Government, and I do not think that that need in any way detract from the clear, unblurred responsibility of the Governor-General, and from the position of the financial adviser as directly under the Governor-General." (*Parl. Deb.*, Vol. 298, Cols. 1901-02).

The powers of the Governor-General with regard to the appointment being a matter within the Governor-General's discretion the Ministers have no constitutional right to be consulted—but having regard to the peculiar position the official occupies, consultation before appointment is specially provided for.

The salary and allowances of the financial adviser and of the staff of the financial adviser are charged on the revenues of the Federation under S. 33 (3) (c) and therefore are not submitted to the vote of the Indian Legislature—S. 34.

16. (1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation.

(2) It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

(3) The Advocate General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

NOTES.

Federal Advocate general—Qualifications:—

(1) The qualifications of the Federal Advocate-General which are the same as for a Judge of the Federal Court are enumerated in S. 200 (3):—

A person shall not be qualified for appointment as a judge of the Federal Court unless he:—

(a) has been for at least five years a judge of a High Court in British India or in a Federated State; or

(b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or

(c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession:

In computing for the purposes of this Sub-Sec. [(3) of S. 200] the standing of barrister or a member of the Faculty of Advocates or the period during which a person has been a pleader, any period during which he has held Judicial Office after he became a Barrister, a member of the faculty of Advocates, or a Pleader, as the case may be, shall be included.

(2) The Advocate-General for the Federation does not possess the same powers as the Attorney-General in England. For instance he will have no jurisdiction or powers in relation to charities, as charities is a Provincial subject. *See* Sch. VII List II item 34. Similarly he cannot sanction or start proceedings complaining of a public nuisance, as these would also fall within the Provincial field. *Cf.* the position of the Advocate-General under S. 114 (2) of the Government of India Act, 1919, where he was authorised to take such proceedings, as may be taken by His Majesty's Attorney-General in England.

He has a right of audience in all Courts in India, in the performance of his duties. But the Princes insisted that his right of audience in the State Courts should be confined to those cases where Federal interests are involved.

Besides advising the Federal Government, it would be part of his duty to represent the Federal Government in all Courts in the Federation and principally in the Federal Court.

The Advocate-General by virtue of his office is entitled to speak and otherwise take part in the proceedings of either Chamber, any joint sitting of the Chambers and any committee of any Chamber, but is not entitled to vote therein—S. 21.

Under S. 225 (2) an application for the transfer of a case involving the validity of a Federal Act pending before an inferior Court to the High Court has to be made by him.

Sub-C1. 4.—Explaining the reasons why it was provided that the appointment, etc., should be in the exercise of the individual judgment of the Governor-General, it was stated:

"No doubt he will perform functions performed by Law Officers here, but he will have no political affiliation with the Ministry, and so far as Ministers require a Law Officer in the political sense, that is to say, a man who will assist them in their Bills and political work, he will not be the Advocate-General but he will be a different individual who will assist them in their parliamentary work. Both Hon. Members are right in saying that the Advocate-General will be adviser of the Federal Government, but, of course, the Federal Government includes the reserved departments and therefore he will advise the Governor-General and his councillors on those reserved departments with which the Ministry will not be concerned.

"There is another point which is of importance. It being provided that this office shall go on even though the responsible Government may change, it is, of course, of the utmost importance that the person selected for it should be a person who will command the confidence of successive Governments. We do not anticipate that conflict will always or necessarily ever arise, but having regard to those two facts, first, that he will advise as to the reserved departments, and, secondly, that it is of vital importance that we should have a man who will command the confidence of the successive Ministries, we have provided that the Governor-General will have the controlling voice in the unfortunate circumstances of any difference arising as to who should be appointed to the office". (*Par. Deb. Vol. 298, col. 1961*).

The salary and allowances of the Advocate-General are charged on the revenues of the Federation (S. 33 (3) (c)) and are therefore not subject to the vote by the legislature (S. 34).

See further Notes to S. 55, *infra*.

Conduct of business of Federal Government.

17. (1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to

bring to the notice of the minister concerned and of the Governor-General any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his ministers.

NOTES.

Conduct of Federal Government.

This follows from the provisions of S. 7 which vests the executive power of the Federation in the Governor-General. Whether the matter be one in respect of which the Governor-General is under the constitutional obligation to be guided by the advice of the ministers, or whether he is acting in the exercise of his individual judgment or in his discretion the order would purport to be issued by the Governor-General.

Under the Government of India Act 1919 as under S. 33 "the superintendence direction and control of the Civil and Military Government of India was vested in the Governor-General in Council" under S. 40 all orders and other proceedings of the Governor-General in Council were to be expressed to be made by the Governor-General in Council.

Sub-S. (2).—Cf. S. 49 (1) of the Government of India Act 1919 as to authentication.

The last part of the sub-section reproduces the 2nd para. of S. 49 (1) *ibid.*

If the notification or other order is authenticated in the manner set forth it cannot be called in question on the ground that it was not an order issued by the Government. See *Mahommed Raza Suhib v. Sadasiva Rao*, 49 Mad. 49; *Ananta Kumar Chakravarti v. Emperor*, 62 Cal. 1041. Where however the notification is not authenticated in the manner prescribed it must be proved as a fact that it was issued by the Governor-General, otherwise the notification would be invalid. *Ekambara v. Commissioner, Corporation of Madras* A.I.R. 1927 M. 22. Cf. *Commissioner, Corporation of Madras v. Ekambara Naicker*, 53 M.L.J. 603.

Sub-S. (3).—In effect this sub-section reproduces S. 40 (2) Government of India Act 1919. The Governor-General has power under the terms of this sub-section to distribute portfolios among the several members of the council of ministers, and the qualification in the concluding portion "in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion", carries out the main scheme of the Act which is to place such matters outside the sphere of ministerial control or responsibility.

Sub-S. (4).—This enacts in statutory form the rules framed under the Government of India Act 1919, and as Dr. A. B. Keith points out "involves the grave inconvenience of placing the secretaries of department, in the position of compelling ministers to submit to the Governor-General issues which the minister may regard as within his sphere," with the added objection that it lays on the minister the impossible duty of inviting the Governor-General's dissent.

Sub-S. (5).—The framing of these rules which comprise the rules of business of both halves of the executive the counsellors and the ministers is kept outside ministerial control but they have to be consulted—one of the very few cases where the Act itself provides for consultation in the sphere of discretionary powers.

See also Notes to S. 59.

CHAPTER III.

THE FEDERAL LEGISLATURE.

General.

18. (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

NOTES.

The Federal Chambers

Sub-S. (2).—Of the 156 representatives of British India, 150 are directly elected by territorial communal constituencies and 6 are nominated by the Governor-General in his discretion, Sch. I, Part I, para. 3. The 104 representatives of the Indian States are nominated by the rulers of the Federating States in accordance with the representation provided for each State in the Table of Seats in Part II of the 1st schedule. The main criterion for the determination of the quantum of representation of each State is the dynastic importance of the State as determined by the dynastic salute to which the ruler is entitled, as distinguished from the personal honours due to a ruler. The table has to be read subject to the provisions of Paras. 10 and 13 of Part II. The States have been given the above representation of 104 Seats in accordance with the demand of the Princes to be provided with 2/5th of the seats in the upper house.

In the Federal Assembly there is no nominated element at all. The British Indian representatives are elected subject to slight exceptions by the provincial lower houses, the members of each communal group forming an electoral college and voting separately to fill the seats allotted to the particular province and to the particular community in accordance with the principle of proportional representation by means of the single transferable vote. Schedule I, Part I, para. 19.

The State representation is divided among the several States, mainly on the principle of population and the total of 125 representatives allotted to the States is in satisfaction of their demand to have 1/3 representation in the lower house, notwithstanding that in regard to the total population of India, the population of the Indian States is much less than 25 per cent. The strength of each chamber in relation to the other, roughly 2:3 has been fixed mainly in view of the special machinery for resolution of deadlocks between the two houses, viz., Joint Sessions, and has been so determined that no measure which the bulk of the States or the "minority communities" do not approve can be carried through the legislature. See further notes to Schedule I.

Sub-S. (5).—The life of the Legislative Assembly under the Government of India Act was 3 years but there was power under S. 63-D (1) (b) to the Governor-General to prolong its life. When a similar proviso enabling such prolongation of the Federal Assembly was proposed it was negatived on the ground stated by *Mr. Butler*: "The assembly under the terms of this measure will have a life of five years which, I may remind the Committee is two years more than the life of the Assembly as at present, which is three years. Moreover, the Government at the centre will be, according to the terms of this Bill, a responsible Government subject to the various provisions of the Bill as we know them, and we do not think it desirable, under the system of government we are setting up at the centre, to make it different from that Government in this country. We believe therefore that it would be unwise to include a provision of the sort proposed. *Par. Deb. Vol. 299, Col. 226.*"

Mr. Cocks a labour Member describing the changes in the Bill from the original scheme of the White Paper said: "In that White Paper, as a result of the Round Table Conferences, the scheme was very different from this one. We had a lower Chamber directly representing the people of India and we had a revising Chamber representing the lower Chamber of the Provincial Legislatures. All that has gone. The original upper Chamber has become the lower Chamber, and in place of the lower Chamber we have a Chamber representing the Princes and the Upper Chambers of the Provinces. We have there reaction doubly enthroned." *Par. Deb. Vol. 299, Col. 230.*

19. (1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(b) prorogue the Chambers,

(c) dissolve the Federal Assembly.

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in the behalf in His Majesty's Proclamation establishing the Federation.

NOTES.

Legislative Session—Prorogation and Dissolution—The requirement that Parliament should meet once at least every year is in England based on convention, though as Dicey has pointed out, the breach of the convention would result in the breach of other positive laws. There was no such statutory requirement under the Government of India Act, 1919.

In this respect the Act follows Dominion precedents and has enacted the provision in terms of S. 6 of the Constitution of the Commonwealth of Australia and S. 20 of the British North America Act.

Though the provision is mandatory it cannot of course be enforced by the ordinary processes of the Law and this not only on the technical ground that the Governor-General is not subject to the processes of the Indian Courts under S. 306, but on general principles as well. The sanction for failure to follow the law is of a political nature only, by appeal to the Crown.

"Year". Presumably means the calendar year.

"Month". "In every Act passed after the year 1850 the expression" month "shall unless the contrary intention appears mean Calendar month." (Interpretation Act, 1889, S. 3.)

Sub-S. (2).—(2) The summoning, proroguing and dissolution of the chambers are not matters within ministerial control. Sub-S. (2) is subject to the requirement of Sub-S. (1). The words of the sub-section reproduce S. 5 of the Constitution of the Commonwealth of Australia though it is obvious the content of the expression "The Governor-General" is different for there he is guided by the advice of the Ministers in the exercise of his functions.

See further Notes to S. 62, *infra*.

Right of Governor-General to address, and send messages to, Chambers.

20. (1) The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members.

(2) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

NOTES.

S. 20 (1). Corresponds to and reproduces S. 63 B (3) of the Government of India Act, 1919.

21. Every minister, every counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

Rights of ministers, counsellors and Advocate-General as respects Chambers.

NOTES.

Minister.—In the case of a minister, he has to be a member of either chamber of the legislature, otherwise at the end of six months he would cease to be a minister. In the case of a minister therefore, this section gives him a right to be present and otherwise take part in the proceedings of the chamber of which he is not a member. The Government of India Act, 1919 S. 63 E (4) provided

"Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian Legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers."

The holding of an office of profit under the Crown in India, is a disqualification for election and for continuation as a member of either chamber of the Legislature—S. 26 (1) (a) but Sub-S. 4 of the section saves the office of minister from the operation of the disqualification.

It would however be seen that the Counsellor and the Advocate-General cannot be a member of either chamber.

The Advocate-General of the provinces, under the Government of India Act 1919, had no right as such to take part in the proceedings of the legislature. But the usual practice was to nominate him to the assemblies so that his services might be available to the Government

22. (1) The Council of State shall as soon as may be choose two members of the Council to be respectively President and Deputy President thereof and, so often as the office of President or Deputy President becomes vacant, the Council shall choose another member to be President or Deputy President, as the case may be.

(2) A member holding office as President or Deputy President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to, the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy President, or, if the office of Deputy President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(4) There shall be paid to the President and the Deputy President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.

(5) The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy Speaker" for the titles "President" and "Deputy President" respectively, and with the substitution of references to the Assembly for references to the Council:

Provided that, without prejudice to the provisions of sub-section (2) of this section as applied by this subsection, whenever the Assembly is dissolved the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

NOTES.

Cf. S. 35 of the Constitution of the Commonwealth of Australia & S. 44 of the British North America Act.

Officers of Chambers.—Under the Government of India Act, 1919, the Council of State had a President nominated by the Governor-General; while in the case of the President of the Assembly the election by the Assembly had to be approved by the Governor-General. S. 63-A (2) & S. 63 (C) (1).

The removal of a President has to be by a resolution carried by an absolute majority of the house, not merely of a majority of the members present. The provision has been made to prevent the recurrence of the incidents in Burma where repeated motions of no confidence against successive Presidents were brought before the Assembly and passed. Under S. 63-C (4) of the Government of India Act of 1919, the vote of a bare majority was sufficient for the removal provided the Governor-General concurred.

Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

23. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such,

The President or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Chamber less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

NOTES.

Sub-S. (1): Voting.—The saving is as regards resolutions for removal of the President and Deputy President which require an absolute majority of the House concerned.

Under S. 63-1 (4) of the Government of India Act, 1919 the President of either Chamber of the legislature had no right to vote except in case of an equality of votes, and this sub-section reproduces the provision.

In the Senates of Australia & Canada the Speaker votes in the first instance and has no second or casting vote and a proposition or resolution is deemed to be lost if the votes are found to be equal; see S. 23 Constitution of the Commonwealth of Australia & S. 36 British North America Act. The Lower Houses in the two Dominions however follow a rule in terms similar to that in the second para. of S. 23 (1).

Sub-S. (2): Vacancy.—The power of the Chambers to act notwithstanding a vacancy reproduces the terms of S. 3, D-4, and the concluding portion of the sub-section would have the effect of preventing, as Dr. A. B. Keith points out, questions of the sort raised, in *Strickland v. Grima*, 1930 A.C. 285 but which were not dealt with or decided by the Judicial Committee. The ordinary rule in the case of meetings of companies and of statutory bodies like Municipal Corporations is that the proceedings of the body are vitiated by strangers taking part in and voting at its meetings. But such unauthorised sitting and voting renders the person liable to the penalty of Rs. 500 per day, specified in S. 27.

Sub-S. (3): Quorum.—This sub-section fixes the quorum for the meetings of the Chamber. Under the Act of 1919, the quorum was fixed by the Governor-General in Council by rules framed under S. 67. It is interesting to note that while in the Australian Parliament the quorum is fixed as high as a third of the House, (Vide

Ss. 22 and 39) in Canada: the quorum for the Senate is fifteen out of a House of the maximum strength of seventy-eight, (S. 35) and for the House of Commons twenty in a house of one hundred and eighty one or less than a ninth.

On the language of the sub-section it would appear that the absence of a quorum does not invalidate the proceedings of the Chamber, especially taken in conjunction with S. 41 (1), but the section merely lays a duty on the presiding officer not to begin or continue the proceedings till the requisite number of members are present. In this connection the contrast between the language employed in Australian and Canadian Acts and the present section is significant. In these Dominions the provision renders the presence of the specified number "necessary to constitute a meeting of the body for the exercise of its powers" which is apt to render void all proceedings of the Chamber when the requisite number is not present.

Provisions as to Members of Legislature.

24. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act, which the member accepts as appropriate in his case.

NOTES.

Analogous Law.—Cf. S. 42 Constitution of the Commonwealth of Australia.

Oath.—The obligation to take the oath or affirmation of allegiance to the Crown was under the Act of 1919, set out in the rules framed thereunder. The penalty for failure to take the oath within such time as was prescribed was formerly vacation of the seat of the member. S. 27 of this Act imposes on a member sitting and voting without taking the oath when "he is not qualified" to do so, a penalty of Rs. 500 for every day on which he so sits or votes which might be recovered as a debt due to the Federation.

Again if for any reason, including it might be, that he has not taken the oath, a member is absent for 60 days without permission of the Chamber from meetings thereof, the Chamber may declare his seat vacant. (S. 25 (3).)

The forms of the oath to be taken are set out in Sch. IV. The use of the expression "the form which the member accepts as appropriate to his case" seems to suggest that a member might take the oath in any of the forms set out therein, which is certainly not what is intended. Parliament would not have contemplated that a British Indian subject elected to represent a British Indian constituency could claim to take the oath appropriate only to the ruler of an Indian State.

25. (1) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber—

(a) becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section; or

(b) by writing under his hand addressed to the Governor-General resigns his seat, his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

NOTES.

Vacation of Seats.

Sub-S. (3).—"Sixty days" in the context means continuously absent for sixty days not an absence of a total of sixty days. The rule under the previous Act, was contained in S. 93 (2) which enabled the Governor-General to declare vacant the seat of a member absent from the meetings for "a period of two consecutive

months", which is in terms of the rule relating to the Senate of the Australian Commonwealth, (S. 20.) "Absence is to be reckoned not from the last meeting he attended but from the 1st meeting he was absent." See *Kershaw v. Shoreditch*. 95 L.T. 55. This sub-section has to be read subject to the provisions of S. 26 (3), in the case of persons who undergo terms of imprisonment during their term as members.

Under this section the seat is not automatically vacated by absence for the prescribed period but a resolution of the Chamber is further needed to render the seat vacant, so that until such a resolution is passed the member can attend and take part in the proceedings of the Chamber. In such circumstances the question arises whether the Chamber has to make the declaration of vacancy immediately after the member has brought himself within the operation of the rule, at its next sitting, or can the Chamber wait indefinitely during which time the member in question functions as such, and thereafter declare the seat vacant. The correct position would seem to be that as it is not obligatory on the Chamber to declare the seat vacant, the enforcement of the penalty may be waived and the conduct of the Chamber in permitting the member to attend and take part in the proceedings after he has brought himself within the operation of the rule would constitute a waiver. Possibly the rules of the House under S. 38, might clarify the matter.

26. (1) A person shall be disqualified for being
Disqualifications chosen as, and for being, a member of either
for membership. Chamber—

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;

(e) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;

(f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification:

Provided that a disqualification under paragraph (f) of this sub-section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of sub-section (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

- (a) he is a minister either for the Federation or for a Province; or
- (b) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

NOTES.

The disqualifications herein set out are disqualifications for standing for election and also operate to vacate the seat on their supervening.

Office of Profit.—(a) An "office" is a right to exercise a public or private employment and to take the fees and emoluments thereunto belonging." Blackstone's Commentaries.

An office of profit does not connote that its incumbent actually makes a profit from it; if "it might reasonably be expected that a man would make a profit out of it it must be considered an office of profit." Per Bayley J., in *Delane v. Hillecoat*, 9 B and C. 313; 109 E. R. 115.

This disqualification has to be read subject to the provisions of S. 307 for the purpose of the first elections to the legislature. That section enacts:

"For the purposes of the first elections of persons to serve as members of the Federal Legislature and of Provincial Legislatures, no person shall be subject to any disqualification by reason only of the fact that he holds.

(a) an office of profit as a non-official member of the Executive Council of the Governor-General or a Governor, or as a Minister in a Province;

(b) an office which is not a whole time office remunerated either by salary or by fees.

Undischarged Insolvent.—Under the electoral rules framed under the Act of 1919, in the case of an insolvent, the disqualification continued even after his discharge unless he "obtained from the Court a certificate that his insolvency was caused by misfortune without any misconduct on his part."

Conviction and Imprisonment.—Under the first electoral rules under the Act of 1919, the period of imprisonment requisite to disqualify was 6 months and the period of disqualification was 5 years and there was no dispensing power. By a notification of July, 1925, the rule was amended by requiring an imprisonment of 1 year to disqualify and by vesting a power in the Governor-General to remove the disqualification. In the Bill as originally introduced in 1935 the previously existing provisions were repeated and the amendment of the period of imprisonment requisite to disqualify to 2 years was effected during the committee stage.

There was considerable opposition to the enactment of this disqualification on the ground of its interfering with the freedom of choice of the elector and on general principles also. For instance Mr. Churchill speaking of this head of disqualification said—

"*Prima facie* it seems to affect two very large principles. The first is that a man who has served his sentence has purged his offence. If the offence has been a very grievous one the sentence will have been a very long one. There has always been a broad principle on which we have worked here that the full time of servitude has been undergone, that is the end of the story. Just as a man is innocent until he is proved guilty, so, after he has satisfied the severe and dread demands of the law, he is cleared." . . . "Then there is the principle of the elector to choose freely".

And Mr. Isaac Foot: "This House has always insisted that the right of the elector should not be affected by the supposed offence of a man who has been

brought under trial of the law. That was an essential principle during the struggles of John Wilkes, out of which struggle arose the establishment of a great deal of our Parliamentary and constitutional liberty. There must be many in India who have been brought into conflict with the law for the prosecution of what they believe to be their rightful aims. We hope under happier auspices and better conditions that many of them will be taking their share of the economic upbuilding of their country, when we have rid that country of sterile political controversies.

"The Committee would like that assurance from the Minister, because prison itself is not a sinister bar. If we took into consideration those who would have been disqualified by the mere fact of imprisonment we should have to think of Mr. John Burns as well as of John Wilkes, Sir Robert Walpole, who was Prime Minister in this country, Sir John Eliot, whose statue I hope will one day be erected within the precincts of Parliament, John Hampden, and even the Apostle Paul."

Answering these criticisms the *Solicitor-General* said: "As to the history of the matter, I think that under the Morley Minto reforms of 1909 there was a similar disqualification, but it was for life, though it could be removed by the Governor. At the time of the Act of 1919, and the Southborough Committee, the period was reduced to five years, but I think there was no dispensing power. By 1925, the dispensing power was introduced."

"... If one looks at the constitutions of the Dominions, one finds a similar provision in the British North America Act, in the Constitution of Australia, and in the South Africa Act. The South Africa Act imposes a disqualification for five years after the imprisonment has expired, and it provides a dispensing power, but only in the case of an amnesty or free pardon. Being limited in that way, it is rather less wide than the dispensing power proposed in the present Bill."

"... The South Africa Act provides that a candidate shall be disqualified if at any time he has been convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of not less than 12 months. Our own Local Government Act contains a somewhat similar provision with regard to candidates for election to local authorities."

"... It is something in the first place which carries on what is already the rule in India; and, secondly, it is not something which is to be found in this Bill and nowhere else, but is a provision similar to that which other Dominions, who in effect drew up their own constitutions thought it wise to insert in those constitutions as reasonable provision."

"... The Rt. Hon. Gentleman asked us to consider the case of a man who was sent to prison for something which clearly would not be regarded by any sensible person as a disqualification for membership of the Legislative Assembly. That is provided for by giving the Governor-General a dispensing power, as is proposed in the Bill. It has been found to be, and I think the Committee will realise that it would be, difficult and undesirable to try to draw a line between the different types of crime. I admit at once that, as the Rt. Hon. Gentleman and other speakers have said, a number of good men have been in prison, but, on the other hand, it will not be disputed that a number of very bad men go to prison, and there are others outside as well. We provide for that by giving the dispensing power which has been used in the past, and which is certainly intended to be used in proper cases."

Sub-C1. (f).—This is part of the machinery devised for enforcing the obligation to lodge the return of election expenses;

Sub-S. (2) Disqualification for Election.—The difference between the language of the opening part of Sub-S. (1) and of this sub-section may be noticed. While the circumstances specified in Sub-section (1) also effect to vacate the seat of a member who becomes subject to disabilities named therein, the disqualification herein mentioned does not have that effect, but merely operates to prevent a person from standing for election.

The period of imprisonment under this Sub-clause need not be the period specified in Sub-S. (1) (c) *viz.*, 2 years; but the requisite condition to bring the disqualification into play is that the person should actually be serving a term of imprisonment on the date of the nomination or poll. From this it follows:—

1 That preventive detention under the various provisions of Indian and Local Enactments is not a disqualification for being chosen as member.

2. That if a person sentenced to imprisonment is on bail at the time of the nomination and the poll he is capable of being elected a member subject of course to the provisions of Sub-S. 1 (c)—the sentence not being imprisonment of two years or over.

If persons of either type specified above were elected, it would appear that the persons so chosen might lose their seats by reason of the operation of S. 25 (3), by their inability to attend meetings of the chamber, if the detention or the imprisonment should continue for the period of 60 days therein specified. "Absence" in its ordinary sense is used "to describe a person or persons as not being in a particular place at the time referred to." *Ashbury v. Ellis*, 1893 A.C. 339. Further the implication arising from Sub-section 3 also points to the conclusion that absence in S. 25 (3) cannot be interpreted to mean "voluntary absence."

27. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

Penalty for sitting and voting when not qualified, or when disqualified.

NOTES.

Not qualified and disqualified.—This section read with S. 24 contemplates two main classes of cases:—

- (1) Individuals who are not qualified, and
- (2) Those who are disqualified

The former category would comprise cases of strangers, those who have resigned their membership, and those who by reason of their continuous absence have been removed by the Chamber; and members who have not taken the oath of allegiance. The latter category would comprise those who come within the disqualifications specified in S. 26 (1), but who notwithstanding that under S. 25 (2) (a) cease to be members continue to sit and vote as members.

See further notes to S. 70, *infra*.

28. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are,

or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

NOTES.

Sub-S. (1).—This sub-section reproduces the provisions of S. 67 (7) of the Government of India Act, 1919.

"Subject to the provisions of this Act" refers to S. 40 and the rules to be framed for preventing discussion on certain subjects under S. 38 (1) proviso, (c) and (d).

Freedom of Speech.

Rules of the House generally provide that "Every speech must be relevant to the matter before the House" and prohibit members from making personal charges against other members, from the use of offensive expressions, making adverse reflections on the conduct of His Majesty, the King, the Governor-General and Viceroy or Court of Justice, uttering treasonable, seditious or defamatory words.

Any proceedings in any Court would include both Civil as well as Criminal Proceedings.

Publication by or under the authority of either Chamber.—The protection does not extend to publications not authorised by the Chamber. The privilege of the House does not include a right to publish a libellous speech apart from the Official reports; *R. v. Lord Abingdon*, (1794) 1 Esp. 226 : 170 E.R. 337 and *R. v. Grieco*, (1813) 1 M. and S. 273. See also, *Wason v. Walter* L.R. 4 Q.B. 73 as to the qualified privilege of a newspaper publishing a *bona fide* report of proceedings in Parliament.

Sub-S. (2): Privileges of Members.—The Federal Legislature is empowered to define the privileges of members without prejudice of course to the provisions of sub-S. (1). But until the Federal Legislature intervenes the existing law as applicable to the members of the Indian Legislature is preserved and continued which would render the Legislative Member's Exemption Act, XXIII of 1925, applicable to members of the Federal Legislature. That Legislation exempted members of all legislative bodies constituted under the Government of India Act, 1919, from liability to serve as jurors or assessors and from arrest and detention under civil process at the time of the meeting of such body or a committee thereof. The latter exemption however loses its importance since the recent amendment of the Civil Procedure Code regarding arrest under civil process.

Sub-S. (3).—Contempt of the Legislature.—The dictum of Baron Parke in *Beaumont v. Barrett*, 1 Moo.P.C.C. 59, that the power of punishing contempts is inherent in every Assembly possessing a supreme legislative authority has been disapproved and it has been held authoritatively that the *lex et consuetudo Parliamenti* do not belong to Colonial Legislatures and that apart from statute such legislatures have no right to punish for contempt, *Kielley v. Carson*, 4 Moo.P.C.C. 63.

In *Doyle v. Falconer*, L.R. 1 P.C. 328, it was said: "It is necessary to distinguish between a power to punish for a contempt which is a judicial power and a power to remove any obstruction offered to the deliberations or proper action of a legislative body during its sitting which last power is necessary for self-preservation. If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting he may be removed or excluded for a time or even expelled, but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another."

But this is only in the absence of legislation. The Commonwealth of Australia Act, (S. 49), provides: "The powers, privileges and immunities of the Senate and of the House of Representatives and of the members and the Committees of each House shall be such as are declared by the Parliament (of Australia) and until declared shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees at the establishment of the Commonwealth". On the construction of a section similarly worded, the Privy Council justified a committal of the appellant by the Legislative Assembly of Victoria for contempt in publishing a libel upon one of its members; (*Dill v. Murphy*, 1 Moo. P.C.C. N.S. 487), a decision which was extended in *Speaker of Legislative Assembly, Victoria v. Glass*, L.R. 3 P.C. 560 to a case where the respondent was

committed to gaol for contempt by a general warrant issued by the speaker which did not specify wherein the contempt lay. It will be noticed that by reason of the form of the warrant, the Courts were not in a position to judge whether contempt had been committed or not.

The Canadian Legislature had under the British North America Act, 1867, (S. 18) power to define its privileges, "but so that the same shall never exceed those at the passing of this Act enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof." As Committees of the House of Commons had no power in 1867 to examine witnesses on oath, difficulty was felt in the Canadian Senate conferring such powers on committees and an Act giving such powers was held *ultra vires* and was disallowed on that ground. But the Imperial Parliament itself intervened in 1875, with legislation conferring power on the Canadian Legislature to assume privileges equivalent to the House of Commons from time to time (38 and 39 Vict. C. 38).

Sub-S. (3).—This sub-section absolutely prohibits the legislature conferring on either Chamber, or the Committee of either Chamber or any officer of either Chamber or Committee the status of a Court with power to punish for contempt as was done in *Fielding v. Thomas*, 1896 A.C. 600. The inhibition is in terms only on the legislature converting itself or its officials into and functioning as a Court. The question then arises, "Is there any fetter imposed on the legislature declaring certain acts as contempts imposing punishments on them and empowering the ordinary Courts to try such cases; in other words does the prohibition in sub-S. (3) trench on the powers of the Legislature in the field of criminal law. An affirmative answer might be suggested as correct for two reasons,

1. The specific provision is sub-S. (4) authorising the legislature to confer powers on Courts in certain cases only, by implication negatives a wider power. If the prohibition in sub-S. (3) were held to be confined to assuming power to itself and its officers sub-S. (4) would be superfluous.

2. This subject cannot fall under "criminal Law" item 1 of List III (Sch. (VII)) as the subject of "offences in respect to matters in List I" is in terms excluded, and item 41 in List I limits the power to what is expressly authorised by Part II of the Act.

Other than a power to remove or exclude: In *Barton v. Taylor*, 11 A.C. 197, the Privy Council held that apart from legislation the power to exclude persons infringing the rules did not extend to justify punitive action, or unconditional suspension of a member during the pleasure of the assembly. The language of sub-Sec. (3) seems apt only to confer on the legislature "such powers as are incident to or inherent in Colonial Legislative bodies, powers which are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute." In this view it would seem the powers which were declared not to exist in *Barton v. Taylor* should be held to be outside the purview of the Indian Legislature.

Sub-S. (5): Persons who though not members speak in and take part in the proceedings of the Chamber are Counsellors, the Advocate-General and the Ministers—S. 21.

29. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

Salaries and allowances of members.

Legislative Procedure.

Provisions as to introduction and passing of Bills.

30 (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

NOTES.

Equal Powers of the Two Houses.—It is one of the cardinal features of this Constitution, one which enters into its very 'architecture' and therefore protected from change under Sch. II, that the two Chambers should enjoy equal powers in regard to legislation. The only inequality is that what are termed 'financial Bills' cannot originate in the Upper Chamber—but to become Law they have to be passed by that Chamber and in the event of disagreement the machinery of joint session is available. Even in respect of taxation or finance, the Upper House has the same rights of interference with financial proposals as the Lower House. Speaking on the subject in the Committee of the House Commons *Major Nathan* said: . . .

"If reference is made to the constitutions which have passed through this House for the purpose of framing a Code of Government for the Dominions, it will be found that, at least of more recent years, each one of the Acts has specifically harked the power of the Upper Chamber in reference especially to matters relating to taxation and the imposition of burdens and charges upon the people. The Commonwealth of Australia Act, for instance, provides in terms that the Senate may not amend proposed laws imposing taxation or appropriating revenues or moneys for the ordinary general services of the Government; and it goes on to say:

'The Senate may not amend any proposed law so as to increase any proposed charge or burden upon the people.'

"Very much the same provision, almost in the same words, appears in the South Africa Act of 1909, constituting the Union of South Africa.

"The Senate may not amend any Bill so far as it imposes taxation or appropriates revenues or moneys for the service of the Government. The Senate may not amend any Bill so as to increase any proposed charges or burdens upon the people.

"It will be found that the constitutional practice in Canada is the same. It is proposed, as has been said by the Secretary of State, that the ultimate objective of this Bill is Dominion status for India. Should not India, therefore, have the same control over her financial machinery as this House has deliberately given to the Dominions?" (*Parl. Deb. Vol. 299, Cols. 302-303*).

Sub-S. (1).—S. 37 defines a Financial Bill and provides that such a Bill shall not be introduced in the Council of State. However even in the case of such Bills after they have passed the Federal Assembly they have to be assented to by the Council of State actually or constructively at a joint session before they become Law.

Sub-S. (2).—This sub-section enacts and gives effect to the principle of the equal powers of the two houses. The White Paper of 1931, proposed a slight diminution in the powers of the Upper House in the sphere of finance. In relation to demands for grants it was proposed, that the power of the Upper House, should be limited to requiring at the instance of the Government, that any demand which had been reduced or rejected should be brought before a joint session but should not extend to the rejection of any demand assented to by the Federal Assembly. But the Joint Select Committee suggested that the equality of powers between the two Chambers should be complete. They therefore recommended that "all demands should first be considered by the Lower House and subsequently by the Upper and that the powers of each House in relation to any demand should be identical, any difference of opinion being resolved at a joint session to be held forthwith". In accordance with this recommendation sub-S. (2) renders the two Houses co-equal as regards their powers.

Joint Sitzings.—The next succeeding section refers to the joint sittings which is the machinery that has been devised to resolve deadlocks.

Comparison with Provincial Upper Houses: The Provincial Upper Houses however where they exist are not regarded as being bodies vested with equal powers with Provincial Assemblies, but merely as delaying Chambers, for the purpose of exercising "a check upon hasty and ill-considered legislation."

Accordingly they differ from the Federal Upper House in three important respects.

(1) The size of the Upper House. We have seen that the relative size of the Council of State as compared with the Federal Assembly is 2 : 3 while the provincial Upper Houses are a fourth or fifth of the strength of the Lower House.

(2) There is no joint session in respect of a Bill originating in the Upper House which is rejected by the Lower Assembly. [S. 74 (2)].

(3) Demands for grants are submitted to the Lower House alone—[S. 79 (2)]. It may be noted that demands for grants were not submitted to the Council of State under the Act of 1919. [S. 67-A (5)].

Sub-S. (3).—This continues the rule under the Government of India Act, 1919 under which only the dissolution of the Chamber caused a bill to lapse, and not merely a prorogation.

A Bill is only pending when it has actually been introduced or when it has had a First Reading. (*Part. Deb.*, Vol. 299, Cols. 309-10.)

Sub-S. (4).—A Bill which originated in the Council of State and is still pending there does not lapse by the dissolution of the other house. There is no need for a converse rule as the Council of State is a permanent body not subject to dissolution.

Sub-S. (5).—The rule is that pending Bills lapse on dissolution. The pendency may be either in the Lower House itself or the Bill having passed the Lower House might be pending in the Council of State. In either event, subject to the provisions of sub-S. (5) of S. 31, the Bill lapses on dissolution of the Assembly.

The Governor-General is a part of the legislature under S. 18, and when a bill which has been passed by the two Chambers is pending before him for his assent, the bill would be "pending in the legislature" and on the analogy of a lapse on the dissolution of the Assembly when a bill passed by it is pending in the Council of State, such a bill should lapse. But the positive provision in sub-S. (5) operates to effect a lapse only in the event of the bill being pending in the Assembly or in the Council of State; thus departing from the English rule, under which Bills pending the assent of the Crown lapse on a dissolution of the Commons.

Joint sittings of both Chambers in certain cases.

31. (1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(a) the Bill is rejected by the other Chamber; or

(b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent, the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the

Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly:

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

NOTES.

Deadlock Machinery.—With the creation of two Houses with equal powers machinery had necessarily to be devised to resolve deadlock; and joint sittings as a solution of this problem is not new to the Constitutional Law of the British Dominions. It was first used in the constitution of the Commonwealth of Australia where (S. 57) the Governor-General was given the right to dissolve both the Houses on disagreement and if after such dissolution the proposed measure was passed by the Lower House but was again rejected by the Senate the Governor-General was empowered to convene a Joint Sitting of both the Houses. A much less complicated mechanism was adopted in the Transvaal Constitution of 1906, by which in respect of money Bills joint sittings in the same session was provided for. The South Africa Act of 1909, S. 63 introduced the same device with small variations in the Union. If the Senate rejects a Bill, it is held over for a session and if the Assembly passes it again and the Senate again rejects it, the Governor-General may convene a Joint Session: which having regard to the strength of the two Houses—the Lower House 150 as against 40 in the Senate leaves the Lower House in a strong position. The Government of India Act, 1919, introduced joint sittings to remove deadlocks between the Assembly and the Council of State, S. 67 (3), though this machinery was not used at all at any time.

Sub-S. (1): Bill passed by one Chamber and transmitted to the other.—In the Federal Legislature Joint sittings could be had wherever the Bill which is the subject of disagreement originated. In the province where there are two Chambers the machinery of joint sittings is available only in respect of legislation originating in the Lower House. Cf. the language of S. 74 (2). "A Bill passed by the Assembly and transmitted to the Council", i.e., in respect of Bills originating in the Upper House this machinery is not available and if the Lower House rejects such a measure, the rejection is final.

Normally anyone of the three conditions specified in S. 31 (1) must exist before the Governor-General can summon a joint session and submit the Bill to it. But this is subject to the proviso. S. 30 enumerates the cases where a Bill lapses by reason of the dissolution of the Assembly. There cannot be a reference to a joint session of a lapsed Bill; but if prior to the dissolution of the Assembly, the Governor-General signifies his intention to submit the Bill to the Legislatures at a joint sitting, the Bill does not lapse by reason of the dissolution of the Assembly. In the provincial Legislatures the period of 12 months *must* in every case elapse before a joint sitting is summoned—whether the Bill is rejected, or the Upper Chamber finally disagrees. (S. 74) This period of 12 months is distributed as 2 periods of six months under this section, one to elapse before the power of the Governor-General comes into play, and another period of six months which must elapse after the notification by the Governor-General before a joint sitting is actually summoned. [Sub-S. (2)].

Joint sittings—though no final disagreement.—The proviso is rather drastic and is quite an unusual provision. In no Constitution in which provision is made for resolution of deadlocks between two chambers, does the machinery come into operation prior to final disagreement between them; in fact great care is taken to see whether the disagreement cannot be resolved by dissolution of one or both the chambers, before joint sessions are summoned. (Cf. S. 57 Constitution of the Commonwealth of Australia) Here, however, if the Governor-General [in his discretion—Sub-S. (3)] is "satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay", he may if the subject-matter of the Bill be one of those specified in the proviso, a fairly wide category, summon a joint sitting immediately.

In regard to financial Bills the provision for an immediate joint sitting in the event of disagreement follows S. 63 of the Union of South Africa Act.

Sub-section (3): Governor-General in his discretion.—This necessarily follows from S. 9 (3) which vests in the Governor-General 'in his discretion' power to decide finally whether the matter is one in which he is entitled to act in his discretion or in the exercise of his individual judgment.

Sub-section (4): The Majority required at joint sitting.—The Constitution of the Commonwealth of Australia, requires an absolute majority of the two Houses to concur in a proposition before it is carried at a joint sitting (S. 57). The South Africa Act 1909 however requires a bare majority of the members present to decide any question (S. 63). The Proviso also reproduces the provision in the South Africa Act, and follows from the ratio of joint sittings being summoned solely to resolve points of disagreement between the two Houses.

Sub-section (5): Where a Joint sitting has been summoned prior to the dissolution of the Assembly, the Bill in respect of which the summons has been made does not lapse on the dissolution of the Assembly. See the exception in S. 30 (5), *supra*.

32. (1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in his Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

NOTES.

Power of Crown to assent to Bills and disallow Acts.—His Majesty represented by the Governor-General is a part of the Legislature and until any Bill is assented to by Him or on His behalf the Bill does not become Law.

Veto or refusal of Assent.—Imperial control has been exercised in the Dominions by the Governor or Governor-General withholding consent, reserving Bills for His Majesty's assent, and disallowance by His Majesty. Though the Dominion Constitutions make provision for all the three, withholding assent by the Governor or the Governor-General has now become almost obsolete, and after the Statute of Westminster can be used if at all only on the advice of the local ministry.

The fact that the Governor-General has given his previous sanction to the introduction of a Bill or measure, where such sanction is requisite does not preclude him after the Bills have passed the Legislature, to exercise any of the powers of veto or reservation, vested in him under this section. (S 109.)

In the cases of the Provinces or States of the Dominions the use of this power has been a little less unusual, and the veto has been based mostly on the ground that the Act would in the opinion of the Governor be *ultra vires* of the legislature. But in a Constitution where special Courts have been erected to decide questions of the validity of legislation, it would be an assumption of a judicial power on the part of the Governor or Governor-General to refuse assent on such a ground.

Even in India refusal of assent has been rarely used and having regard to the provision of the Act requiring the previous sanction of the Governor-General in respect of Bills touching matters of importance, the occasion for the use of such a power would be rare.

Remittal or return of the Bill.—Remittal or return is machinery to avoid a later veto or disallowance. Cf. S. 67 (4) Government of India Act, 1919. When portions of a Bill are remitted or returned the jurisdiction of the Legislature is confined only to those parts which are remitted and no amendments of other portions would be in order unless they are consequential.

A question of considerable difficulty was mooted in relation to the powers of remittal under the Act of 1919, in connection with the enactment of the Madras Hindu Religious Endowments Act I of 1925. The Bill passed through the Legislature in 1923 and when it was presented to the Governor for his assent, His Excellency considered that certain portions of the Bill required amendment and accordingly returned the Bill for reconsideration by the Council under S. 81-A. But by the time of the return, the Council which passed the original Bill had been dissolved and a new Council was in session, and the remitted Bill was considered or reconsidered by the newly elected Council and the measure passed. The question whether there could be a remittal to and a reconsideration by a Council other than the Council which originally passed it and the validity of the legislation thus passed (Madras Act I of 1925) was raised in suits which were filed to contest the same. But by the time these suits were heard, the Legislature passed a fresh enactment (Madras Act II of 1927) repealing and re-enacting the impugned legislation and validating all action taken under the prior enactment. See S. 7 Madras Act II of 1927. The Court therefore had no need to deal with the invalidity of Madras Act I of 1925. (*Sri Vydilinga Pandarasannadhi v. Sir T. Sadasiva Aiyer*, 55 M.L.J. 605). If a similar question were to arise under the present Act, it is possible that S. 41 (1) might cure the irregularity, even if any, apart altogether from the question whether the expression the 'Federal Chamber' in the proviso to S. 32 (1) does not mean "the assembly created by the Constitution Act which though liable to be dissolved or to expire by effluxion of time, is an essential part of the constitution and must be regarded as a permanent body". (*A.G. for New South Wales v. Rennie*, 1896 A.C. 376).

Reservation.—It is in the matter of the "Instructions" as to the reservation of Bills that as Dr. A. B. Keith points out the aspect of the Governor or Governor-General as an Imperial Officer is most obvious.

The Act follows the Canadian model where the Constitution Act does not lay down the type of legislation which the Governor-General is to reserve. The right to issue instructions to the Governor as to the measures which have to be reserved is inherent in the prerogative of the Crown. That constitutional right is here given statutory form in S. 14. The Constitution of the Commonwealth of Australia itself makes provision for reservation in one case (S. 74) in regard to legislation, affecting the right to appeal to the Privy Council. A more detailed provision is however to be found in S. 63 of the South Africa Act 1909 (before its amendment following the Statute of Westminster). In some Imperial Statutes however, clauses are to be found, requiring legislation of certain types to be reserved as a condition of their validity. Cf. S. 735 and 736 Merchant Shipping Act, 1894; S. 4 Colonial Courts of Admiralty Act 1890—(which have now ceased to apply to the 'Dominions' by virtue of the Statute of Westminster. Ss. 5 & 6.)

The usual machinery employed however to secure reservation was and is the Instrument of Instructions to the Governors, and the Governors were generally instructed to reserve legislation affecting, (1) The Prerogative of the Crown. (2) Changes in the constitution. (3) Legislation discriminating against non-residents. (4) Immigration and treatment of coloured races. (5) Treaty relations and foreign affairs. (6) Merchant Shipping. (7) Copyright. (8) Divorce and Status. (9) Naval & Military defence. (10) Judicial matters including appeals. (11) Ecclesiastical matters.

Para. XIII of the Instrument of Instructions provides for the cases in which the Governor-General is to reserve Bills. It runs as follows:—

XIII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor-General shall not assent in Our name, to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which those Courts are by the Act designed to fill;

(c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purpose of Chapter III, Part V, or section 299 of the Act.

(d) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement

A reserved Bill lapses if it is not assented to by His Majesty within twelve months after reservation.

Disallowance.—Some objection was raised in the Committee of the House of Commons to the retention of this power of 'disallowance' by the Crown on the ground that the power to withhold assent, and the power to direct the Governor-General to reserve, rendered such a provision superfluous and that its use might lead to inconvenience as raising legal problems as to the effect of the legislation in the interval. Speaking on this subject Sir S. Hoare described it as a "piece of conservative constitutionalism" and justified its retention on the ground:—

"This is a provision that is contained in every Constitution Act of a similar kind within the British Empire and it is necessary from the point of view of the prerogative of the Crown.

".....Without it, the Crown would part with its prerogative under which it can withhold its assent to the Act of any subordinate legislature, and, technically, legislatures of this kind are subordinate legislatures. From the point of view of the prerogative of the Crown the provision is necessary and in actual practice it is not in the least likely that difficulties will arise." (*Par. Deb. Vol. 299, Col. 311*).

A disallowed Act ceases to be valid only from the date of the notification of the disallowance and until then the Act is in force. The British North America Act provides for the disallowance of Provincial Statutes by the Governor-General of the Dominions and states that the signification of the disallowance "shall annul

the Act from and after the date of such signification". In *Wilson v. Esquimalt & etc., Co.*, (1922) 1 A.C. 202, the question arose whether by reason of the disallowance of a Statute of British Columbia by the Governor-General of Canada the rights of a private grantee of certain lands under the terms of the disallowed Statute were nullified. Holding that it did not, Justice Duff delivering the judgment of the Judicial Committee said "cases may no doubt arise giving place for controversy touching the application of this phrase, ('the disallowance shall annul the Act from and after the date of such signification') but their Lordships think that the language itself discloses with sufficient clearness an intention that at all events as to private rights completely constituted and founded upon transactions entirely past and closed, the disallowance of a Provincial Statute shall be inoperative".

The form in which the disallowance is signified is by an Order in Council.

Procedure in Financial matters.

33. (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation, and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenue of the Federation:—

(a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;

(b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;

(d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

(e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges;

(f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;

(g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;

(h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

NOTES.

Sub-S (1)—Corresponds to S. 67-A (1) Government of India Act, 1919.

Sub-S. (2).—"Shall indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities". This is in order to distinguish expenditure for which the Governor-General is personally responsible from expenditure for which the Ministers are responsible, as any other course would tend to blur the respective responsibilities.

Sub-S. (3): Charged on the Revenues of the Federation.—Expenditure charged upon the revenues of the Federation is under S. 34 (1) not subject to the vote of the legislature. (These items correspond to those comprised in S. 67-A (3) of the Government of India Act, 1919). The items of this list comprise in part those which in England would fall under the Consolidated Fund, and in large part of others which have been withheld from the powers of the legislature as a safeguard to the services. The items of expenditure thus "charged upon the Revenues of the Federation" absorb over 90 per cent. of the Federal Budget which are thus beyond the competence of the Legislature to affect.

Sub-S (3) (c) Salaries of Ministers.—Salaries of Ministers are classed as non-votable, a rule at variance with the rule under the Government of India Act, 1919 and the practice in other Dominions. But under S. 10 (3) the Legislature may from time to time by Act determine the salary of a Minister, subject however to the proviso that the salary of a minister may not be varied during his term of office.

(d) Pensions of Judges.—The pensions of the judges of the Provincial High Court have been charged on the revenues of the Federation as they are appointed by the Crown, the scheme of the Act being that the pensions of all officers appointed by the Secretary of State or by the Crown are charged on the revenues of the Federation, though the amounts are later adjusted and debited to the provinces concerned. See S. 156. The rule as regards salaries is different and is directly charged on the revenues of the Federation or the Provinces whichever they happen to serve. S. 247 (4) and (5). The salaries and allowances of judges are accordingly charged on the revenues of the Provinces under S. 78 (3) (d).

(e).—The matters in this sub-para deal with the reserved departments as to Defence Cf S. 237.

External affairs.—"External affairs in so far as the Governor-General is required to Act in his discretion"—If therefore any expenditure is involved in connection with negotiations with the Dominions in the Empire it would be a votable item.

Administration of any territory.—This relates to the Administration of British Baluchistan, the Andamans and the Nicobar Islands. Cf. Ss 95 and 96.

(f).—See Notes to S. 146, *infra*.

Sub-S. (3) (i): Any other expenditure declared by this Act to be so charged.—A list of the sections under which expenditure is charged on the revenues of the Federation is given below. They would be found to relate mostly to the salaries, allowances and privileges of the services, which are thus taken out of the control of the Indian Legislature.

Ss. 148, 158 (2); 163; 166 (4); 170 (6); 178 (1) and (4); 180 (4); 197 (8); 216; 237; 238; 247 (4) and (5); 249 (2); 252 (3); 253 (2); 259 (1) and (2); 268; 270 (2); 271 (3); 280 (3); 282 (3); 283; 284; 300; 305.

34. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (i) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein:

Provided that where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

NOTES.

Discussion in Legislature on non-votable items.—(1) Under S. 67-A (3) of the Act of 1919, there could be no discussion of the non-votable portion of the estimates of expenditure unless the Governor-General otherwise directed. The Governor-General however as a matter of practice permitted their free discussion. The present rule permits discussion as of right, on all the items except two, *viz.*, the salary and allowances of the Governor-General and his Office, and expenditure in connection with the Indian States.

Presentation of Demands for Grants.—As in case of Finance Bills demands for grants have to be first presented to the Assembly and thereafter to the Council of State. But the powers of the Houses are, as stated already, equal subject to the directions of the Governor-General.

The provision for a joint session under sub-S. (3) in the case of demands for grants is in terms of the provision in the South African Constitution. S. 63.

Finality of decision of Legislature on Demands.—In the case of expenditure which under S. 33 (2) has been indicated as "sums which are included because the Governor-General has directed their inclusion as being necessary for the discharge of any of his special responsibilities", the rejection or reduction by the legislature is not final, but the Governor-General is empowered under the proviso to S. 35 (1) to restore such demand up to the amount originally included in the estimate. But otherwise the decision of the legislature reducing or rejecting any demand is final and it is this power over supply which is said to give the legislature real control over the Executive. The Joint Parliamentary Committee go on to

explain: "It has been objected that the Heads of Expenditure which will not be subject to the vote of, but only open to discussion by, the Legislature are so extensive as materially to diminish the field of responsible Government. We are satisfied that there is little, if any, substance in this objection. Most of the heads of expenditure would not even in the United Kingdom be the subject of an annual vote by Parliament and the inclusion of those which do not fall within that category is a matter of reasonable precaution, if responsible Government itself is to be a reality in the future"—a statement with which it is difficult to agree, for in the United Kingdom there is no question of any fetter on the powers of Parliament to alter the items in the Consolidated Fund charges if it was deemed necessary to do so.

Sub-S. (4)—This is based on the principle "which must always be the foundation of any sound system of public finance that no proposal for the imposition of taxation, or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues can be made without the recommendation of the Governor", &c., it can only be made on the responsibility of the executive. That is why the legislature has no power to "increase" expenditure. It can only "assent" "refuse" or "reduce" a demand but can never increase the same.

Authentication of
schedule of authoris-
ed expenditure.

35. (1) The Governor-General shall authenticate by his signature a schedule specifying—

(a) the grants made by the Chambers under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature:

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

NOTES.

Sub-Section (1): Authentication by Governor-General.—The procedure of authentication by the Governor-General is proposed for a double purpose:—

(i) to secure that the audit authorities should be concerned only with a single document as authority for all appropriations of revenue, by whatever legal procedure such appropriations have been made; and

(ii) to secure that the Governor-General does not make any appropriations under his special powers without the Legislature being made cognisant thereof. (*White Paper Para. 39.*)

Restoration of Cuts or Certification.—The power to restore demands for grants conferred by the proviso are those referred to in the concluding portion of S. 33 (2) and the power is only to restore not to add to the original demand. Further the Governor-General has to be satisfied anew that their restoration is necessary for the due discharge of his special responsibilities.

The expression "the Governor-General in his opinion" used in the proviso would standing alone, and having regard to the scheme of the Act, and the terminology employed to designate cases of the personal responsibility of the Governor-General, mean the Governor-General acting on the advice of his ministers. It is however submitted that in the context, the expression can only mean the Governor-

General acting personally, as the matter affects "special responsibilities" attaching to him and him alone.

Sub-S. (2).—The authenticated Schedules are placed before the Chambers for their information only. They are not open to discussion or vote because

(1) Such portions of the schedule as are within the absolute power of the legislature have already been discussed and voted upon and such vote has become final.

(2) In respect of the other portions of the schedule the Governor-General in virtue of his legislative powers has made the grant.

36. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before both Chambers of the Federal Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Supplementary
statements of ex-
penditure.

NOTES.

Supplementary Estimates:

"Says Col. Durell on Parliamentary Grants, Chapter I, page 49: "It is a sound principle that one and only one estimate of national expenditure should be laid before Parliament during each session, for to render Parliamentary control effectual, it is necessary that the House of Commons should have the money transactions of the year presented to it in one mass and in one account."

"Supplementary estimates are always looked upon with particular jealousy by popular legislatures because they tend to diminish the control of the legislature. Reference may be made to the speech of Sir Austin Chamberlain in the House of Commons in 1921, where he described supplementary estimates as 'the weak joint in the armour of any Government.'" Per *C. C. Ghose in Kumar Shankar Roy v. Cotton*, 40 C.L.J. 515 at pp. 527, 528.

Special provisions as to financial Bills. **37.** (1) A Bill or amendment making provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

NOTES.

This section embodies the constitutional principle of Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire.—

"The House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament unless recommended by the Crown". Cf. also S. 34 (4), *supra*

Procedure generally.

38. (1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business.

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment:

(b) for securing the timely completion of financial business:

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General, in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;

(d) for prohibiting, save with the consent of the Governor-General in his discretion,—

(i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof; and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding sub-section as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

NOTES.

Sub-S. (1) (c). Prohibition of discussion of matters connected with Indian States.—In regard to the anomaly of the representatives of the Princes taking part in the discussions on the internal affairs of British India in so far as these are within the Federal sphere, while the representatives of British India have no corresponding right to discuss the affairs of States, *Mr. Butler* said:—

"There are in the practice of the Imperial Parliament here certain anomalies which bear some similarity to the difficulty which the hon. and gallant Member has experienced in the future presence of State representatives in the Indian Assembly. My right hon. Friend the Member for Timworth (Sir A. Steel Maitland) has expressed one, and there is another in the presence in our midst of, I will not say too many, but a great number of Scottish Members, who take part in our deliberations and upon whose point of view and upon whose interests we very often deliberate and vote and ~~are~~ *are* ~~represent~~. There are these anomalies in this Parliament, and there will undoubtedly be a certain anomaly in the presence of States representatives taking part on occasion on points of view and issues primarily of interest to British India.

"This subject has been considered throughout all the discussion of the Round Table Conferences and all the occasions when these matters have been discussed between representatives of British India and representatives of the States, and it may help the Committee if I give some idea of the conclusion to which the various minds that have considered this problem have come during the last several years. The general conclusion has been that it would be almost impossible to frame any such provision as the hon. and gallant Member suggests, and that it would be undesirable to do anything which would result in differentiating the functions and powers of the different categories of members in the Federal Legislature. The general conclusion come to is that we should settle this matter in the proper and true British spirit of a convention, rather than by trying to come to any artificial device to achieve the desired end, because we do not believe it would do so. The Princes and their representatives have always been against any artificial suggestion by which this desired end could be achieved, and they have always insisted that on any matter on which the future fate of the Government, for example, was concerned their representatives should have the right to decide upon the future of that Government. That is one of the practical difficulties which arise and make us believe that the best way to deal with this complicated matter is upon the lines of a convention rather than upon the lines of some provision in the Act." (*Par. Deb. Vol. 299, Cols 345-347*).

Sub-S. (1) (c) "British Subject".—In this clause the expression includes both Indian as well as European British subject. Explaining the reasons which led the Government to enact this restriction on discussion in the Federal Legislature, *Sir Samuel Hoare* said:

"Let us disabuse our minds of the illusion that the Parliament we are discussing is a unitary Parliament, like this Parliament. It is not. It is a federal Parliament. There is all the difference in the world, as I have said more than once in these debates, between a unitary legislature dealing with the whole field of government and a Federal Legislature dealing with definitely delimited field of duties. Law and order neither so far as British India is concerned nor so far as the India of the States is concerned is a Federal subject. It is a provincial subject so far as British India is concerned and it is a State subject so far as the India of the Indian States is concerned. That being so, there can be no justification whatever for questions on the internal administration of the units being put in the Federal Assembly. It would be outside the purview of the Federal Assembly. It would be outside the responsibility of any Federal Minister.

"There is a proviso that the Governor-General can allow a discussion when the discussion is within the orbit of the federal field, and when he thinks that it does not go outside that federal field, I am certain that the Governor-General would allow a discussion of that kind. For instance, such cases as have been mentioned, cases of the treatment of a British Indian citizen in the States, that is the kind of question that undoubtedly would be discussed. Further than that there would be no justification, quite apart from the question whether the Indian States are

better or worse administered than the British India Provinces." (*Parl Deb. Vol. 299, Cols. 415-416*).

Sub-Cl. (d) (i) and (ii): Discussion of Foreign Affairs.—"Let me come to the second proposition, that concerned with the discussion of foreign affairs. Foreign affairs are reserved to the Governor-General. Being reserved, it is essential if the reserved powers are not to be compromised that the Governor-General should have full powers as to their discussion and as to the kind of questions that can be discussed. In actual practice there is and always has been in the system of the Government of India a safeguard of this kind, in which a discussion of foreign affairs only takes place with the previous sanction of the Governor-General. In actual practice that has been found to be a salutary safeguard. It has been found that in the orbit of the activities of the Assembly where discussion has been safe and legitimate such discussions have been allowed. In the case of a federal constitution, in which quite definitely foreign affairs become a reserved department, there is a necessity for a safeguard of this kind. Here again I cannot conceive any sensible Governor-General shutting down discussion where the discussion is not going to compromise important Indian and Imperial interests, but I do think that if the Governor-General is to have real responsibility in the reserved department of foreign affairs he must have a safeguarding power of this kind.

".....Thirdly, I am contemplating a Federal Government in which both sides, those responsible for the reserved departments and those responsible for the transferred departments, are going to work in active and constant co-operation"..... "None the less if a conflict does arise, I think that quite definitely the Governor-General ought to have these powers". "In a case of this kind it is essential, because it is an essential part of the scheme. Without a power of this kind the Governor-General's responsibility might be seriously compromised." *Ibid.* The prohibition of the discussion of foreign relations would not include within its scope trade and commercial relations with foreign states.

Action by Governor-General in relation to the affairs of a Province.—"Province" here means a "Governor's Province"—(S. 46) and does not include a "Chief Commissioner's Province". The distinction between the two lies in that the Governor-General and the Federal Executive are directly responsible for the administration of the latter provinces. (S. 94). The prohibition has reference to the exercise of the powers of the Governor-General in his discretion under S. 126 (4) and (5).

See further Notes to S. 84, *infra*.

English to be used
in the Federal Legis-
lature.

39. All proceedings in the Federal Legislature shall be conducted in the English language:

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

NOTES.

The proviso merely preserves the situation as it exists at present under the present rules of business of the Indian Legislature for the past 12 years.

40 (1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

In this sub-section the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

NOTES.

Sub-S. (1). "In the discharge of his duties."—The duties of a Judge are in part judicial and in part administrative (S. 224, *infra*.) The Bill confined the protection to Judges in "the performance of their judicial functions." The protection has now been enlarged to cover administrative duties also, and for this reason;

"It is obvious that the main duties of a Judge are judicial but, as we realise, it might be possible to get round what the sub-section is intended to effect and produce the evil which it is intended to prevent by purporting, at any rate, to criticise the administrative functions of a Judge or criticise the Judge in other than his directly judicial functions." (*Parl. Deb. Vol. 302, Col. 647*).

Sub-S. (2). *The Solicitor-General*.—"Is the discussion of a Bill in the Assembly a matter which might constitute or cause a menace to peace and tranquillity, because if it is it must be right to give the Governor-General power to prohibit that discussion? There are questions in India affecting religious and social customs which, if raised in a provocative form, might give rise at a particular moment to dangerous explosions of violence, and it is for that reason that the Government advise the Committee to retain the sub-section which is restricted, as will be seen, to the discussion of a Bill introduced or proposed to be introduced. It does not prevent them from asking questions, or the tabling of a Motion by a private Member."

"This provision has been on the Statute Book for 16 years. It is certainly not our intention that discussion of proper and legitimate proposals for social reform should be impeded in any way. If my hon. Friend looks at paragraph 29 of the Instrument of Instructions he will see underlined there that the intention of the sub-section is that it is only to be used if the Governor-General is satisfied that the discussion itself, in obviously very exceptional circumstances, may constitute a menace to peace and tranquillity." (*Par. Deb. Vol. 299, col. 445*.)

See further Notes to S. 86, *infra*.

41. (1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

NOTES.

Sub-S. (1). Courts and the Legislature.—This sub-section seeks to cure defects arising from irregularity of procedure in the Legislature. The activities of a chamber may be divided into internal and external, the internal activities being the sphere of procedure, while the external are subject to the law of the constitution. It is to irregularities in the domain of the former class that this sub-section addresses itself. Under the latter head would fall defects arising from want of legislative competence, which is a matter external to the assembly and not a matter of procedure. Again in order that the legislature might function, it must be summoned by the competent authority i.e., the Governor-General and if the legislature or any Chamber purported to summon itself or meet without a summons of the Governor-General the proceedings of the body would be invalid. The *form* prescribed by the Act for the emergence of a valid legislative measure must be adhered to and without a Bill passing through both Houses a legislative measure would not result.

Similarly where a particular majority is requisite for the enactment of a measure or the passing of a resolution, in the absence of the requisite majority, the resulting measure or resolution is not valid.

Irregularities like, meeting in a wrong place, or a wrong person presiding, or any error or irregularity in the conduct of the proceedings such as a breach of the rules in debate, etc., would be cured by the section.

There is one irregularity, which ordinarily would vitiate the proceedings of a body, *viz*: presence of strangers who take part in the proceedings and vote. In respect of this, however, express provision has been made validating the proceedings. There are a few persons who are expressly not permitted to vote, *viz*: Counsellors, Advocate General and Ministers in the Chamber of which they are

not members and the President and Speaker (except in case of equality). If as a result of their votes a measure is declared carried is its validity open to challenge afterwards? The language of S. 23 (2) seems to be wide enough to include these cases also and to validate the proceedings.

Immunity of Officers of Legislature.—This sub-section is intended to prevent the repetition of such proceedings as resulted in the injunction granted by the Calcutta High Court to restrain the President of the Legislative Council from putting demands for ministers' salaries before the Council. See *Kumar Shankar Roy v. Il. E. A. Cotton*, 40 C.L.J. 515. See also Notes to S. 87, *infra*.

CHAPTER IV.

LEGISLATIVE POWERS OF GOVERNOR-GENERAL.

Power of Governor-General to promulgate ordinances during recess of Legislature. 42. (1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor-General—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and

(b) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General; and

(c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

Power of Governor-General to promulgate ordinances at any time with respect to certain subjects. 43. (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;

(b) may be withdrawn at any time by the Governor-General; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

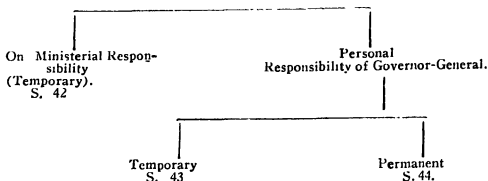
(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

NOTES.

Previous statutory provision.—Cf. S. 67-B (Act of 1919) which empowered the Governor-General to pass Acts on failure of the Legislature to pass a Bill deemed necessary by him for the safety and tranquillity of India; and S. 72 under which the Governor-General could in cases of emergency issue Ordinances which were valid for not more than 6 months from the date of their promulgation. The Calcutta High Court held that there was nothing to prevent the Governor-General from

repeating an ordinance on the expiry of the 6 months' period and that the power could be exercised from time to time. *Anukul Chandra v. Dainik Nayak*, A.I.R. 1933 Cal. 278=142 I.C. 225 (S.B.).

Legislative Power of the Governor-General.—The following table illustrates the broad divisions into which the powers of executive extra-parliamentary legislation fall.



Governor-General's Ordinances on Ministerial Advice: S. 42.—These can be issued only when the legislature is not in session, a restriction not applicable to legislation under the two later sections. The ministers are responsible to the legislature and the special power is not intended to override the legislature, but merely as provision in an emergency. The provisions of sub-S. 2 (a) strikingly demonstrate this aspect of these Ordinances.

The proviso to sub-S. (1) does not make provision for the Governor-General "in his discretion" as these "Ordinances" are issued within the field of ministerial responsibility and the Governor-General "in his discretion" is outside that field. The withdrawal of these Ordinances under sub-S. (2) (c) is also on ministerial advice.

Governor-General's Ordinances on his own responsibility: S. 43.—These Ordinances may be issued even when the Legislature is in session and the only condition required is that the Governor-General should be satisfied that they are required to enable him satisfactorily to discharge his obligations in the reserved departments or in the field of his special responsibilities.

The duration of the operation of an ordinance is six months, but unlike as under S. 72 of the Act of 1919 the ordinance can be repeated only once. The maximum total duration can now be only 12 months. Sub-S. (2).

As the Governor-General is acting "in his discretion" in the promulgation of these ordinances a safeguard is provided and sub-S. (3) (c) requires that an ordinance extending a previous ordinance shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

Speaking of these two types of Ordinances, *Sir S. Hoare* said: "I am not quite sure whether my Hon. Friend has appreciated the scope of this clause (S. 42) which deals with the ordinances promulgated by the Governor-General upon the advice of his ministers. Cl. 43 deals with the ordinances made by the Governor-General in his own discretion. The first kind made by the Governor-General on the advice of his ministers are very much like the emergency orders made by the Government here in time of emergency under what is called the Emergency Powers Act, and which have to receive Parliamentary sanction within a given time. The Governor-General's ordinances either within his own competence or his special responsibilities are made in Clause 43." (*Par. Deb.*, Vol. 299, Cols. 454-55).

Governor-General's Acts—Or Permanent Legislation on his own Responsibility: S. 44.—Two points of distinction between the ordinances in S. 43 and the Acts in S. 44 (1) exist. The former are temporary and the latter permanent. The legislature may be associated in some form with the latter, while the legislature is absolutely ignored under S. 43.

Explaining this second feature of the legislation, the Joint Parliamentary Committee dealing with the corresponding provisions applicable to Provincial Governments observe: "We agree with the members of the British India Delegation in thinking it undesirable that the Governor should be required to submit a proposed Governor's Act to the legislature before enacting it. We do not, indeed, share their fear, that the Governor might use this procedure for the purpose of seeking

support in the legislature against his Ministers. Our objection rather is that the proposed procedure (Sub-S. (i) (b)) will be a useless formality in the only circumstances in which a Governor's Act could reasonably be contemplated. If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the legislature to pass it, but in the unwillingness of the ministers to sponsor it his remedy lies not in a Governor's Act, but in a change of ministry. If, on the other hand, the obstacle lies in the unwillingness of the legislature, there can clearly be no point in submitting the proposed legislation to it, and to do so might merely exacerbate political feeling. Since however there may be intermediate cases where an opportunity may usefully be given to the legislature for revising a hasty or unconsidered decision previously made or threatened, we think that the Governor should have the power to notify the legislature by message of his intention at the expiration of, say one month, to enact a Governor's Act, the terms of which he would set out in the message. It would then be open to the legislature, if it thought fit, to present an address to the Governor at any time before the expiration of the month praying him only to enact the proposed Act with certain amendments which he could then consider upon their merits, or even think fit to revise its former decision and to forestall the Governor by itself enacting legislation in the sense desired by him."

Legislation under all the 3 sections have these common features:—(1) All are subject to disallowance by the Crown (2) The limitations on the powers of the legislature under Part V are applicable to legislation under this Chapter. Dealing with the scope of these Ordinances Sir S. Hoare said. "The ordinances could not be made outside the scope of the Federal Provinces. I do not know whether I have made that point clear. The Governor-General could not make an ordinance over and above the powers given him within the Federation. There is, however, a clause, (Clause 102), that enables action to be taken in an emergency in the nature of D.O.R.A. legislation here. That gives him a wide field to extend his ordinance even outside the Federal field. The ordinances under Clauses 42 and 43 have to be within the powers given to the Federal Legislature and the Federal Executive under this Bill."

"The ordinary position exists that the Federal Courts will determine the extent of the powers of the Federal Legislature which will be the measure of the yard stick of the powers of the Governor-General, his power of making an Act or an Ordinance." (*Part. Deb. Vol. 299, col. 456*).

As the Ordinance under S. 43 and the Governor-General's Acts under S. 44 are promulgated and enacted by the Governor-General "in his discretion", a fetter is imposed on the powers of the Federal Legislature in interfering with them and S. 108 (1) (b) requires the previous sanction of the Governor-General in his discretion before either chamber can consider any Bill which repeals, amends or is repugnant to any Governor-General's Act or Ordinance.

With the reservation of certain departments to the Governor-General in his discretion, powers of legislation of the sort provided in Ss. 43 and 44 were perhaps inevitable. For instance in the constitution of Malta, where defence is reserved from the powers of the legislature, the Governor is empowered to legislate on all reserved matters by Ordinance.

CHAPTER V.

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

45. (1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority, and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation,

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion,

NOTES.

The Breakdown Clause.—This section provides for the resumption by the Governor-General of the powers vested in the various Federal Organs, other than the Federal Court, if he is satisfied that the Government of the Federation cannot be carried on in accordance with the provisions of this Act; in other words if there should be a breakdown in the machinery of the Federal Legislature or the Federal Council of ministers. In those events, the Governor-General may, to such extent as he declares, supersede the ministry [sub-S. 1 (a)] or supercede the Legislature and the ministry [sub-S. 1 (b)]. In this connection it may be noted that under rule 6 of the Devolution Rules under the Government of India Act, 1919, the Governor-General in Council was empowered, by Notification in the Gazette of India to revoke or suspend for such period as he may consider necessary the transfer of any provincial subject; and by rules framed under S. 52 (3), "Transferred subjects Temporary Administration Rules", the Governor was enabled to assume charge of the department of a Minister if there was a vacancy in the Office of Minister, and to administer the same pending the appointment of one.

There is no obligation on the part of the Governor-General to suspend the whole of the Constitution; he may suspend it in part keeping the rest of the Constitution functioning.

Time Limit of Three Years—Sub.S. (4).—The original bill did not contain this time-limit of 3 years as the maximum period under which the Government

could be carried on under the breakdown clause. Explaining the reasons for the provision, the Secretary of State said: "From the point of view of British India it would be objectionable to see, even with the periodical approval of Imperial Parliament, this constitution turned into a permanent dictatorship. From the point of view of the Indian States it would be highly objectionable where they have made concessions in the Federal field upon the assumption that the Federation was a permanent constitution, to see the Federation abrogated in a time of emergency and the powers delegated by them for federal purposes used outside the Federal Government by the Governor-General." (*Par. Deb. Vol. 299, Col. 460-1*).

"At the end of the 3 years it is not as if we are left with no Government of India at all. We then revert to the provisions of this Act except S. 45 and Parliament would have to choose between reverting to the provisions of this Act or passing an Amending Act."

On the occurrence of such a contingency the powers of Parliament to amend the Act continue to be subject to the restrictions imposed by S. 6 (5). If Parliament desired to continue the Federation, it will not be competent to it to amend without the consent of the Federating States, those portions of the Second Schedule the alterations of which would under its terms affect their accession.

Legislation by the Governor-General during breakdown—Sub-S. (5).—During this period the Governor-General has all the powers of the Federal Legislature under the Legislative lists in Schedule VII, but the duration of his legislation is fixed by this sub-section to two years from the date on which the proclamation ceases. This is subject to the further proviso that "the appropriate legislature has not repealed or re-enacted it."

The expression "appropriate Legislature" is used because the Legislation in question might have, if the circumstances set forth in S. 102 existed, covered the provincial field, or the Governor-General might have enacted legislation on subjects in the concurrent list.

Where the Governor-General acting under the terms of this section assumes to himself the powers of the Federal Legislature his legislative powers are subject to the same limitations as those of the Federal Legislature and their validity can be challenged in Courts.

[The whole of Part III has been Brought into force from 1st April 1937 by the Government of India (Commencement Etc.) Order 1936,

PART III. The Governors' Provinces.

CHAPTER I. THE PROVINCES.

46. (1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.

(2) Burma shall cease to be part of India.

(3) In this Act the expression "Province" means, unless the context otherwise requires a Governor's Province, and "Provincial" shall be construed accordingly.

NOTES.

Creation of new provinces.—Section 190 lays down the machinery for the creation of new Governor's provinces, and for the alteration of the boundaries of Provinces.

Two new provinces have been created by the Government of India Act, 1935, *viz.* Sind and Orissa; and the Province of Burma has ceased to be part of India. For the creation of the two new Provinces of Sind and Orissa, the definition of their boundaries, etc., see S. 289.

47. Whereas certain territory (in this Act referred to as "Berar") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces:

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar:

Now, therefore,—

(1) While any such agreement is in force—

(a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of the Central Provinces and Berar;

(b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall except for the purposes of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness;

(c) any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar, or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement:

(2) If no such agreement is concluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper.

NOTES.

History of the Berars.—This territory forms part of the Dominions of His Exalted Highness, the Nizam of Hyderabad and by a treaty made in 1853, the Nizam assigned the districts to the exclusive management of the British Resident for the time being at Hyderabad and to such other officers acting under his orders as might from time to time be appointed by the Government of India. The assignment was for the purpose of paying the Hyderabad contingent and certain other expenses. On 26th November, 1860, a further treaty was made between Her Majesty Queen Victoria and the Nizam whereby the latter agreed to forego all demands for an account of the rents and expenditure of the assigned districts and Article 6 of the Treaty provided that the Districts in Berar and certain other territories yielding a gross revenue of 32 lakhs of rupees should be held by the British Government in trust for the payment of the troops of the Hyderabad contingent. In 1902, however, a permanent arrangement was come to by which the Nizam whose sovereignty over the area was reaffirmed, leased the districts to the British Government in perpetuity in consideration of a payment to him by the British Government of the fixed and perpetual rent of 25 lakhs of rupees and the British Government "while retaining the full and exclusive jurisdiction and authority over the assigned districts which they enjoyed under the Treaties of 1853 and 1860 were at liberty notwithstanding anything to the contrary in those treaties to administer the assigned districts in such manner as they deem desirable". The Governor-General has been legislating for this area under Orders in Council under the Foreign Jurisdiction Act. See *Dattatraya v. Secretary of State*, 57 I.A. 318; 60 M.L.J. 7. (F.C.)

Position of Berars under Government of India Act, 1919.—These territories were administered with, but not as a part of the Central Provinces. The inhabitants elected a certain number of representatives, who were then formally nominated as members of the Central Provinces Legislature; Legislation both of the Central Legislature and as well as of the provincial was applied through the machinery of the Foreign Jurisdiction Act. (See J. P. C. Report, para. 61.) Berar being Hyderabad territory, the inhabitants of Berar are not British subjects and never have been, but are subjects of the Nizam. *Dattaraya v. Secretary of State*, 57 I.A. 318 (P.C.). But notwithstanding this, the Berar members were taking the oath to His Majesty. The Revenues of Berar were under Rule 14 (2) of the Devolution Rules allocated to the Local Government of the Central Provinces as a source of Provincial Revenue, but with the condition that "if in the opinion of the Governor-General in Council provision has not been made for expenditure necessary for the safety and tranquillity of Berar, the allocation shall be terminated by order of the Governor-General in Council or diminished by such amount as the Governor-General in Council may by order in writing direct.

Under the Government of India Act. 1935.—This Act gets rid of the anomalous position. In the future,

1. The administration of Berars will be as part of the Central Provinces.

2. The Berar members will in their oath of allegiance to His Majesty save their allegiance to His Exalted Highness and take the oath in form 3 of the 4th Schedule.

The Governor of the Central Provinces and Berars is vested with a special responsibility under S. 52 (2) of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar; and the Instrument of Instructions issued to him directs that if he is "at any time of opinion that the policy hitherto in force affords him no satisfactory guidance in the interpretation of his special responsibility he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiassed persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable".

The agreement contemplated by the Section has been concluded

CHAPTER II.

THE PROVINCIAL EXECUTIVE.

The Governor.

48. (1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

NOTES.

Appointment of Governor.—See notes to S. 3, *supra*. Under S. 46 (2) of the Government of India Act, 1919, Governors of Provinces were appointed by His Majesty after consultation with the Governor-General and the consultation has been discontinued as inconsistent with provincial autonomy and with the status of the Provinces as, 'units' in the Federation.

Salary and Allowances.—The salary, allowances and privileges having been fixed by the Act itself, they cannot be altered except by Parliamentary Legislation. The salaries, etc., are charged on the revenues of the Province under S. 78 (3) and are therefore not votable by the Legislative Assembly and the legislature is prevented from discussing this demand under S. 79 (1).

Persons appointed to act as Governor have the same powers as persons appointed under this section. See S. 304.

As to the secretarial staff of Governors See S. 305.

Protection from suits, etc., is provided for Governors by S. 306.

49. (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local or other authority.

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.

NOTES.

See Notes to S. 8.

Executive Authority of Provinces:—The executive authority of the Provinces is exercised on behalf of His Majesty by the Governor. This gives effect to the Federal principle in the constitution, the Provinces deriving their powers directly from the Sovereign, and not from the Central Government as its agent or delegate. The words of Lord Watson in *Liquidators of the Maritime Bank of Canada v. Receiver General of New Brunswick*, describing the position of the Canadian Provinces under the British North America Act would be a correct description of the position and status of the Provinces under this Act. "A Lieutenant Governor when appointed, is as much the representative of Her Majesty for all purposes of Provincial Government, as the Governor-General himself is for all purposes of Dominion Government." (1892) A.C. 437 at p. 443; and as Lord Haldane has said in *Great West Saddlery Co. v. the King*, "Within the spheres allotted to them by the Act the Dominion and the Provinces are rendered on general principle co-ordinate Governments". [(1921) 2 A.C. 91 at 100].

The authority conferred by the section is to be exercised subject to the provisions of any legislation enacted by Federal or Provincial legislatures.

Sub-S. (2): The executive power extends to the subjects mentioned in the concurrent list also, except in so far as Federal legislation has covered the field under S. 126 (2). The executive power of the Federation, as noticed already, does not extend in a Province to matters 'with respect to which the Provincial Legislature has power to make Laws'. See proviso (1) to S. 8 (1), *supra*.

Administration of Provincial Affairs.

50. (1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the council of Ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

NOTES.

See Notes to S. 9, *supra*.

Council of Ministers—Federation and Provinces—Difference.

The main point of difference between the position of the ministers at the Federal Centre and those in the Provinces lies in the larger field of ministerial

responsibility in the Provinces. At the centre the departments of defence and external affairs are reserved while in the Provinces there is no reserved department as such, though in relation to 'Excluded areas' the administration is vested in the Governor in his discretion. But the exercise of the discretion being confined territorially to small areas, in Madras for instance, only the Laccadive Islands, does not trench on the province of ministers. The Governor of a Province has no special responsibility for the financial stability of the Province. In the result therefore the field wherein the Governor has to be guided by ministerial advice is far larger in the Provinces than in the Federation.

Council of Ministers: Speaking of the position of the Prime or Chief Minister and the collective responsibility of the ministers the *Secretary of State* said: "The position of Prime Minister and collective responsibility are features of the constitution that are going to grow up. Our intention is to encourage collective responsibility and certainly not discourage the appointment of a Prime Minister. But they are essentially features of a constitution that grow up rather than are created by Statute. We make our position clear in paragraph 7 of the Instrument of Instructions. We make it quite clear that the objective we have in mind is collective responsibility." (*Par. Deb. Vol. 299, col. 510*).

Minister to aid and advise the Governor: The manner in which the Council of Ministers has to be chosen is dealt with in the notes to the next section. The function of the Council of Ministers is to aid and advise the Governor, in fields where he is not directed to act 'in his discretion'. The White Paper, 1931, sets out the function of the ministers and their relations with Governors in these terms: "The Council of Ministers will be entitled to tender advice to the Governor on all matters which fall within the provincial sphere, other than the use of the powers described by the Constitution Act as exercisable by the Governor at his discretion. The Governor will be guided by the advice tendered to him by Ministers, unless so to be guided would be, in his judgment, inconsistent with the fulfilment of any of the purposes for the fulfilment of which he will be declared by the Constitution Act to be charged with a "special responsibility"; in which case the Governor will be entitled, and enjoined, to act, notwithstanding the advice tendered to him, in such manner as he deems requisite for the discharge of his special responsibilities." (Introduction para. 45).

It will be noticed that while the ministers are given the right to advise the Governor, the obligation of the latter to follow and be guided by the advice tendered is not expressly set out in the Act though it clearly arises by implication from the proviso to sub-S. (1). The Government of India Act, 1919 S. 52 (3) provided that in relation to transferred subjects "the Governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion in which case he may require action to be taken otherwise than in accordance with that advice."

But the present Act does not contain any such statutory obligation. The Governor's relations with his Ministers, except where he is directed by the Statute to act in his discretion or to exercise his individual judgment is left to be determined by the Instrument of Instructions. The Joint Parliamentary Committee recommended such abstention from imposing a statutory obligation on the ground that to do so would be "to convert a constitutional convention into a rule of law and thus perhaps bring it within the cognizance of the Courts".

Discretion: "The Ministers would have no constitutional right under the Act to tender advice upon a matter within a Governor's discretion, but the Governor could in any event and doubtless often would consult them before his own decision is made and if at some future time it seemed that this power of consultation might with safety be made mandatory there is nothing inconsistent with the Act in amending the Instrument of Instructions for such a purpose". (J. P. C. Report para. 76).

The position of the Governor and his duties: The advice tendered by Sir Edward Bulwer Lytton then Secretary of State for the Colonies to Sir George Bowen, the first Governor of the Colony of Queensland, contained in a letter addressed to him in 1859, as to the manner in which a Colonial Governor ought to carry on the administration, may profitably be pondered by all Governors.

"Remember that the first care of a Governor in a free Colony is to shun the reproach of being a party man. Give all parties and all the Ministers formed the fairest play.

"Mark and study the idiosyncrasies of the community; every community has some, peculiar to itself. In your public addresses appeal to those which are the noblest; the noblest are always the most universal and the most durable. They are popular to no party.

"As you will have a free press, you will have some papers that may be abusive. Never be thinskinnd about these; laugh them off. Be pointedly courteous to all editors and writers acknowledging socially their craft and its importance. The more you treat people as gentlemen and the more "they will behave as such."

"After all men are governed as much by the heart as by the head. Evident sympathy in the progress of the Colony; traits of kindness, generosity, devoted energy, where required the public weal; a pure exercise of patronage, an utter absence of vindictiveness or spite; the fairness that belongs to magnanimity—these are the qualities that makes Governors powerful, while men merely sharp and clever may be weak and detested.

"But there is one rule which I find pretty universal in colonies. The governor who is the least huffy, and who is most careful not to overgovern, is the one who has the most authority".

Responsibility of Governors and Ministers—The basic scheme of the Act is that for every act of Government, the executive must be responsible to some legislature—either that created by the Act, or to the Parliament of the United Kingdom. A complete and absolute dichotomy of functions and responsibilities is established between the Governor on the one hand and the ministers on the other; and the Act takes care to see that there is no blurring of the respective responsibilities. While responsibility of the Ministers to the Local Legislature is not in terms made statutory, S. 54 read with S. 14 embodies in statutory form the control of Parliament over the Governor acting personally.

51. (1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

NOTES.

See Notes to S. 10, *supra*.

Chosen and summoned by the Governor in his discretion: The Instructions of Instructions para. VII provides:—

"In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature, these persons (including so far as practicable members of important minority communities) who will be best in a position collectively to command the confidence of the Legislature".

The "person" in consultation with whom the Governor chooses the other ministers will presumably be the individual who in common parlance is known as the "Chief Minister".

In practice the Governor is not likely to have much of a choice in the selection of this person, for in the nature of things, there are not likely to be more than one

who can claim to be the leader of a majority party in the Assembly. If there is, however, more than one, the Governor's choice among them would be unfettered. The other Councillors to be chosen are to be those who will best be in a position to command the confidence of the Legislature.

In view of the emphasis laid by the Instrument of Instructions that the ministers chosen by the Governor should command the confidence of the legislature, acute controversy has arisen as to the constitutionality of the appointment by the Governor of certain individuals as "Interim ministers" when such individuals could not command a majority in the legislature. The Indian National Congress having secured an absolute majority in the Assemblies of six Provinces, insisted on certain assurances from the Governors as to the use of their Special Powers before they would accept office. This the Governors refused to do, and in consequence the Congress declined to accept office. The Governors thereupon summoned certain individuals as ministers belonging to minority parties in the legislature.

Constitutionally proper course of action was open to the Governors in either of the two alternatives arising out of the situation brought about by the attitude of the Congress.

(1) Had the Governors reason to believe that the individuals chosen and summoned as ministers would be able to command a majority in the Legislature or if the Governors had received an assurance from the ministers of such ability on their part or if the Governors or the persons chosen were satisfied that having regard to the state of party divisions, or the mobility of opinion among the elected members, there was such a chance the appointment of these ministers would not have been open to question; for the alternative before the Governors of assuming the role of a dictator under S. 93 is not to be lightly undertaken, until every effort is made to work the constitution. In such a view however the legislature ought to have been summoned reasonably early after the ministry was formed.

(2) If however on the other hand, it was clear to the Governors and the ministers themselves that they did not and could not command the confidence of the legislature, it is submitted, that the action of the Governors was not the correct constitutional course and Mr. A. B. Keith has lent his authority to the above view. However the action of the Governors has been sought to be justified on the analogy of minorities' ministries in England on several occasions. It is doubtful whether instances of such ministries in the early days before Cabinet responsibility to Parliament was developed would be of any assistance. Recent instances afford no parallel either, for in them such minorities held office by the *suffrance* of the majority in Parliament, and not in *defiance* of the legislature; and the position was by no means inconsistent with responsible government, but was the product of a situation where a majority party had broken up or where there were more than two parties in the legislature, none of which was of sufficient strength to command an absolute majority. If the circumstances were as stated in this paragraph, the "interim ministry" would be a negation of responsible government in any sense; the more proper course being for the Governors to have acted under S. 93.

Governor's right or obligation to dismiss his ministers: The circumstances in which this power could or ought to be exercised may be examined:

(a) **When the ministers have ceased to possess the confidence of the Legislature:** The first and indeed the normal case where the power would be exercised is when the ministers cease to command the confidence of the Legislature. The Governors' power, in such a case is really used in support of the principle of responsible government, and in enforcement of the convention which requires such ministers to resign their office. In the circumstances stated, it would not only be the right but the duty of the Governor to insist on the ministers resigning or to dismiss them; for their continuance in office would be in flagrant violation of all principles of responsible government; and the Governor cannot with any propriety be constitutionally guided by the advice of such ministers.

Dismissal in such a state of affairs gives rise to no problems of constitutional law and whether technically the succeeding ministry advise the governor, or the Governor chooses and summons the ministry subsequent to the dismissal of the first ministry does not make much of a difference in principle.

(b) **Dismissal of ministers who command the confidence of the Legislature, but who have ceased to command the confidence of the Governor:** The problem raised here has assumed importance by reason of the demand made by the Indian National Congress that when a situation arises for a Governor to overrule his ministers on the ground of their advice trenching on any of his "special responsibilities" the Governor should dismiss the ministry from office, or

at any rate call upon them to resign. It may be premised that the special responsibilities occur within the sphere normally allotted to ministers and they can arise only from a failure on the part of ministers to observe the ordinary canons of sound and proper administration.

In this connection the observations of Alpheus Todd on the duty of Governors made at a time when the power of Colonial Governors to "dissent from the opinion of their councils, if they saw sufficient cause to do so", was real, may be read with profit.

Speaking of the relationship between a Governor and his ministers Todd says:

"The responsibility of the Local Administration (ministers) for all acts of Government is absolute and unqualified. But it is essentially a responsibility to the Legislature and especially to the popular chamber thereof—whilst the responsibility of the Governor is solely to the Crown. It is indispensable to the welfare of good government of the Colony that these separate responsibilities should never be permitted to clash; and the best guarantee against the possible occurrence of such an event is to be found in the continued existence of the most cordial and unreserved harmony and co-operation between the Governor and his advisers.

"It is undoubtedly incumbent upon a constitutional Governor to co-operate honourably, though in no partisan spirit with his ministers for the time being, and to accept their advice on all public matters, unless he should see sufficient cause to justify him in refusing to concur in their recommendations. On the other hand, every objection by the Governor to a policy or proceeding submitted for his approval should be considered by his ministers with the deference and respect due to his office. In the free interchange of opinion between those who are equally concerned in the endeavour to promote the public good, it is reasonable to suppose that a unity of sentiment would ultimately prevail.

"But if it should prove otherwise, it must always be remembered that the Governor is not bound to comply with the advice of his ministers. In the event of a recommendation being submitted to him that involved a breach of the law, or that was contrary to the express instructions received from the Crown, he would be obliged to refuse to sanction

"In the ordinary exercise of his constitutional discretion, a Governor is unquestionably competent to reject the advice of his ministers, whenever that advice should seem to him to be adverse to the public welfare or of an injurious tendency. In such a contingency if no compromise be possible, either the resignation or the dismissal of ministers must ensue. The Governor must then seek for other advisors". (Todd-Parliamentary Government in the Colonies 2nd Edn., pp. 50-52).

And in another place:

"The right of a Governor to dismiss his ministers when he has ceased to have confidence in them is undeniable, and that right is not impaired by the fact of their being able to command a majority in the representative chamber. This principle has been repeatedly affirmed in Colonies under responsible Government, and it is now placed beyond the reach of cavil by the corroborative testimony of her Majesty's Secretary of State for the Colonies in the *Le Gallien case*, that 'there can be no doubt that the Governor has an unquestionable right to dismiss his ministers if from any cause, he feels it incumbent upon him to do so'.

"This abstract right being admitted, we may go further and declare that it is the bounden duty of a Governor to dismiss his ministers, if he believes their policy to be injurious to public interests or their conduct to be such, in their official capacity that he can no longer act with them harmoniously for the public good", *ibid.* p. 615-6.

This statement of Todd as regards the right or duty of the Governors to dismiss Ministers was in assertion of the right of Governors by one who advocated the case of Imperial control and intervention. Nevertheless it was certainly a correct description of the constitutional relations between the Dominion Governors and their ministers at the beginning of responsible Government in the Dominions, when the Governor's powers of interference with the actions of his ministers were real. As such, in the conditions created by this Act (Government of India Act) where the power of the Governors to overrule their ministers is even more sharply emphasised, it seems very apt and correct. In the Dominions however, such a view of the Governor's powers has become obsolete, for to make the Governor's personal opinion that the policy of the ministers is against public interests as sufficient justification for dismissing ministers possessing the confidence of Parliament is to sacrifice all pretence to responsible or Parliamentary Government.

A further question that arises may also be examined: Before dismissing his ministers has the Governor to assure himself that he can replace the dismissed ministry by others who will be acceptable to the Assembly as well as to himself? The answer would have to be in the affirmative. The Act requires that there should always be a council of ministers, who will undertake the responsibility for the Government of the Province and the inevitable facts of the situation would compel the Governor to seek the advice of an alternative ministry in such crisis. The Governor could no doubt have recourse to the dissolution of the Assembly, but the appeal to the electorate would be justified only if the Governor is convinced that the electorate will disapprove the conduct of the ministers whom he chooses to dismiss and would send in others who would shoulder the responsibility of office agreeably to his own wishes.

Sub-S. (2): The period of six months here provided for would also be availed of for enabling ministers to hold their office after the assembly is dissolved. It might be that the party formerly in power is returned in a majority or is defeated at the polls; in either event the ministry would continue in office, till they themselves are re-appointed or their successors assume office.

52. (1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:—

Special responsibilities of Governor.

(a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;

(b) the safeguarding of the legitimate interests of minorities;

(c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;

(d) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation;

(e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;

(f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

NOTES.

See Notes to S. 12, supra.

Special Responsibilities: As stated already special responsibilities operate in the sphere which is within the province of Ministers. They are infractions from full and unfettered ministerial responsibility, and to the extent Governors can act in the exercise of their individual judgment, the completeness of Provincial autonomy is infringed. The reason is that in so far as the Governor acts in his discretion or in his individual judgment he is responsible immediately to the Governor-General (S. 54) and through him to the Secretary of State and Parliament (S. 14).

The manner in which the Governor is to interpret and exercise his powers in relation to the special responsibilities is set out in the Instrument of Instructions:

"VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own".

The special responsibilities here enumerated are mostly the same as those in S. 12, with this important difference that there is no 'special responsibility' for the financial credit of the Province laid on Governors of Provinces. The main reason for the omission is not far to seek.

Finance at the centre is vitally connected with the defence of India, which is a reserved subject. The pensions of all officers recruited by the Secretary of State, a matter in which England is vitally interested, amounting to over 5 crores of rupees annually, are charged on the revenues of the Federation.

(a) **Prevention of grave menace to peace, etc.:** Under S. 50 of the Government of India Act 1919, this was the only ground on which the Governor could overrule his Executive Council.

(b) **Legitimate Interests of Ministers:** The Instrument of Instructions para IX provides:—Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number of their primitive condition or their lack of educational or material advantages or from any other cause, as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

(c) **Public Services:** Para. X, Provides:—In the discharge of his special responsibility for the securing members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

(d) **Discrimination:** Para. XI, provides:—The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

(e) **Partially excluded areas:** See Notes to Ss. 91 and 92, *infra*.

(f) **Protection of rights of Indian State:** Para. XII, provides:—Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise; and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right."

(g) **Orders of the Governor-General:** The reference here is to the directions issued by the Governor-General in his discretion under S. 126 (3), (4) and (5).

Sub-S. (2) Berars.—See Notes to S. 47.

Excluded areas.—The administration of "excluded areas" is vested in the Governor in his discretion. S. 92 (3).

Agency Functions.—Under S. 123 the Governor-General may direct the Governor of any province to discharge as his agent such functions in relation to tribal areas as may be specified and also in relation to defence, external affairs and ecclesiastical affairs—i.e. in the departments which under S. 11 are reserved to the Governor-General in his discretion. The Governor in discharging such agency functions is to act in his discretion; naturally so, because it cannot be expected that what is withheld from the sphere of federal ministers, would be entrusted to the Provincial Ministers. The Governor is therefore vested with a special responsibility in that behalf, in other words, he is given the power to overrule his ministers if action is taken by them which is likely to prejudice or impede his action in the reserved sphere.

53. (1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

NOTES.

See Notes to S. 13 *supra*.

Cf. S. 4 of the Colonial Laws Validity Act, 1865.

"No colonial law passed with the concurrence of or assented to by the Governor of any Colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or imperative by some reason only of any instructions with reference to such law or the subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any instrument other than the Letters Patent or Instrument authorising such Governor to concur in passing or to assent to laws for the peace, order, and good Government of such Colonies even though such Instructions may be referred to in such Letters Patent or last mentioned Instrument."

54. (1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor-General in his discretion, but the validity of any-

Provisions as to Instrument of Instructions.

Superintendence of Governor-General.

thing done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.

NOTES.

See Notes to S. 14 *supra*.

In so far as the Governor acts on the advice of his ministers, the responsibility is really that of the minister and is to the Provincial Legislature. But when the Governor decides that a case has arisen for him to act in the exercise of his individual judgment and acts accordingly ministerial responsibility is at an end. The body or authority to whom the Governor is responsible for his actions in such a contingency is set out in S. 54. The responsibility to the Governor-General is immediate, but the ultimate responsibility is to Parliament through the Secretary of State under S. 14. For the Governor-General in controlling the Governor acts "in his discretion" and when he acts "in his discretion", he is subject to the orders of the Secretary of State under S. 14 and the Secretary of State is responsible to Parliament for his administration of India.

55. (1) The Governor of each Province shall
 Advocate-General appoint a person, being a person qualified to be
 for Province. appointed a judge of a High Court, to be Advocate
 —General for the Province.

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

NOTES.

Advocate-General of Provinces.—In regard to the office of the Advocate-General in the Provinces the Joint Parliamentary Committee say in their report:—

"We have been impressed by the desirability of making available to each Provincial Government the services of a Law Officer of independence and standing, who would occupy substantially the same position as that of the Advocate-General at present attached to the Governments of each of the three Presidencies of Bengal, Madras and Bombay. S. 114 of the Government of India Act, 1919 enables His Majesty to appoint by warrant an Advocate-General for each of those Presidencies, but defines his functions no more explicitly than by providing that each Advocate-General may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England. We are informed however that, in practice, the functions of the Advocate-General may be briefly described as being to advise the Provincial Government on any legal problem which may be referred to him, to represent the Crown in Original Causes, in the High Court to which the Crown is a party, and also in any criminal appeals in the High Court which are regarded as of special importance; while instances of his power to take such proceedings as may be taken by the Attorney-General here are his power to enter a *nolle prosequi* or to grant a fiat for review of verdict in criminal cases tried by the High Court in its Original Jurisdiction, and to protect public rights in such matters as public charities and public nuisances."

"We think that it will prove under the new Constitution no less necessary that an office of this kind, with a statutory basis, should be at the disposal of all Provincial Governments than it has proved in the past in the three Presidencies where its existence is due to the fact that in the three Presidencies the High Courts, with

which the Advocate-General himself has an historical connection, have themselves a history differing from that of the High Courts elsewhere. It is no part of our intention to suggest that the office of Advocate-General should, like that of the Law Officers here, have a political side to it; indeed, our main object is to secure for the Provincial Governments legal advice from an officer, not merely well qualified to tender such advice but entirely free from the trammels of political or party associations, whose salary would not be votable and who would retain his appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he may be associated during his tenure of office. We think, in particular, that the existence of such an office would prove a valuable aid to a Ministry in deciding the difficult questions which are not infrequently raised by those prosecutions which require the authority of the Government for their initiation, though we recognise that the responsibility for decisions in these matters must of necessity rest in the last resort on the Government itself." (*J. P. C. Report Para. 400 and 401.*)

Under S. 114 of the Government of India Act 1919 the Advocate General for the Presidencies was appointed by His Majesty by Warrant under the Royal Sign Manual.

The appointment and dismissal of the Advocate-General is now within the ministerial field, though the Governor exercises an overriding power in the matter. It may however, be noticed that the overriding powers of the Governor extend only to three matters; (1) His appointment, (2) Dismissal; and (3) remuneration. In regard however to the matters specified in sub-S. (2), *viz.*, the duties which the Advocate-General may be required to perform, the matter is entirely within the province of ministers, and the Governor has to be guided by their advice.

Sub-S. (4).—"In our view as the function of the Advocate General is to advise the Provincial Government, it would be quite wrong to take the question of who should be appointed completely out of the ministerial fields, and I think there might be resentment if that were done. It is because we are alive to the importance of the Joint Select Committee's recommendations that this matter should not have a political complexion and therefore should be a matter within the competence of successive Governors, that we have provided that the Governor shall have the final word." (*Parl. Deb. Vol. 299. Col. 1288.*)

See S. 16 and notes thereto.

56 Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

NOTES.

Law and Order.—Law and order are said to be completely transferred to the field of ministerial responsibility. *Mr Butler* said "We consider that the responsibility of the ministers must be genuine and real" and the Joint Parliamentary Committee pointed out that they were unable to conceive a government to which the quality of responsibility could be attributed, if it had no responsibility for public order. "In no other sphere has the word 'responsibility' so profound and significant a meaning and nothing will afford Indians the opportunity of demonstrating more conclusively their fitness to govern themselves than their action in this sphere. From one point of view the transfer of these functions to an Indian minister may be in the interests of the police themselves, whom it will be no longer possible to attack, as they have been attacked in the past as agents of oppression acting on behalf of an alien power.... It must not be supposed however that we are blind to the risks implicit in the course which we advocate. The qualities most essential in a police force, discipline, impartiality and confidence in its officers, are precisely those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above, and it would indeed be disastrous if in any Province the police force, were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister. If therefore the transfer is to be made, it is essential that the Force should be protected as far as possible against these risks" (Para. 91).

The safeguards, which are accordingly enacted for the purposes above stated are seven in number.

(1) The special responsibility already noticed, for 'the prevention of any grave menace to the peace or tranquillity of the province or any part thereof.

(2) A much wider power not merely to overrule the minister, but special legislative and financial powers conferred under S. 80 and Ss. 89 and 90.

(3) The provisions of this section which enables the Governor to exercise his individual judgment in the matter of the amendment of Police rules.

(4) The responsibility which the Governor has to protect all services including the Police Service, in their legitimate rights.

(5) The requirement of previous sanction under S. 108 (2) to legislation amending the Police Acts.

(6) The rules under S. 58 for safeguarding the sources of certain information from ministers.

(7) Finally, the power of the Governor to resume the administration of the entire field of public order if it appears to him that the peace or tranquillity of a province is likely to be endangered in the circumstances set out in S. 57.

57. (1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the Government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

NOTES.

Declaration of State of Emergency.

The section provides that if a Provincial Governor considers that there is a threat to peace and tranquillity he can declare a state of emergency. In the case of a violent attempt to overthrow the Government he can take upon himself the whole responsibility of dealing with the situation. After he has declared the state of emergency, he can delegate to some official who is not a member of the Legislature, power to take part in the proceedings of the Legislature without the power to vote. In such a situation the transfer of Law and Order to the control of ministers which is normally in force is suspended and the departments becomes so to speak "reserved departments".

The section contemplates a situation arising not so serious as that envisaged in S. 93 where provision is made for the contingency of a breakdown in the constitution when the Parliamentary system can no longer continue in operation. In such a case therefore it is only necessary to take over one department or two without bringing to an end the whole machinery of Provincial Government.

Sub-S. (2): This carries out in the Provincial field the principle adopted in the Federal Centre that where there is a reserved department the Governor-General will have his counsellor to take part in the discussions in the Legislature upon questions affecting such department.

Sub-S. (4): This is a saving clause enacted *ex abundanti cautela*.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

(a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or

(b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

NOTES.

Sources of Information of Intelligence Department not to be disclosed.

The basis of this section is that it is essential to a proper functioning of a secret intelligence service that the sources of its information should not be disclosed to any outside the service; and that such a service is necessary to protect the Government and the public from terrorists.

The Joint Parliamentary Committee having recommended that the department of Public Order should be transferred to the administration of ministers, insisted that as one of the safeguards necessary for the suppression of terrorist crimes, the sources of certain information should be withheld from the ministers. The reasons which led them to this conclusion were that "sources of information would dry up at once, if their identity became known or were liable to become known, outside the particular circle of police officers concerned". They therefore stated that it was "essential that the records of any such Intelligence Department should be protected from even the slightest danger of leakage. . . . It has been argued that an Indian Minister, who may have to defend subsequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information on which he is invited to act is in all respects trustworthy and that the names of the informants or agents from whom it has been obtained could not in the last resort be withheld from him. We think that those who argue thus are not acquainted with the general practice in matters of this kind. We are informed by those who have experience of such matters in this country that the practice is that in a secret service case the names are not disclosed even to the minister most immediately concerned. We have no reason to suppose that the Indian Ministers will not adopt the same convention, but the difficulty arises not because Indian Ministers are likely to demand or disclose the names of informants or agents; but because the informants or agents themselves would not feel secure that their identity might not be revealed. So long as this doubt exists, the consequences are the same whether it is illfounded or not".

It was explained in the Committee of the House of Commons that: "The Joint Select Committee made their recommendations, not because they distrusted Indian Ministers, but because they wished to see carried out in India the convention that actually exists in this country. If it is a sign that Indian Ministers are not to be trusted that they are not given the sources of secret information, it is also a sign that British Ministers are not to be trusted, for that is the actual practice here". (*Par. Deb., Vol. 302, Col. 817-818*).

The power to make rules conferred by the section is confined to the sources of information in respect of the crimes referred to in the last section, *viz.*, crimes of violence which in the opinion of the Governor in his discretion, are intended to overthrow the Government as by law established.

The Joint Select Committee drew a distinction between these crimes of violence and the more ordinary kinds of crime, and they had particularly in mind the danger to an informer in cases of this kind if by chance his name was in any way compromised. They felt in other cases there was not the same risk. In other cases it is probable that the informer would come actually as a witness into Court, whereas in a case of terrorism it is very likely that he would not come into Court at all, and in any case it would be quite exceptional for the agent's name to be given any sort of publicity.

"Shall make rules".—The obligation on the Governor to make rules under this section is mandatory, as is evident from the use of the expression "shall".

Rules by the Governor of Madras.

In exercise of the powers conferred by clauses (a) and (b) of section 58 of the Government of India Act, 1935, His Excellency the Governor of Madras in his discretion, is hereby pleased to make the following rules, namely:—

1. Except as hereinafter provided, a member of a police force in the province or any other servant of the Crown therein, shall not—

(a) disclose, or be compelled to disclose, the source from which or the channel through which any information with respect to the operations of persons committing, or conspiring, preparing or attempting to commit such crimes as are mentioned in sub-S. (1) of S. 57 of the Government of India Act, 1935, has been or may be obtained; or

(b) communicate or be compelled to communicate any matter, whether contained in records or otherwise, which discloses or in his opinion might, in conjunction with other circumstances or matters, result in the disclosure of, or permit to be inferred, the source from which or the channel through which any such information as aforesaid has been or may be obtained.

NOTE.—Section 58 and this rule protect also sources of information relating to *past* acts of commission of such crimes, and to *past* conspiracies, preparations, and attempts to commit such crimes.

2. The provisions of rule 1 shall not apply to a disclosure or communication—

(i) by any member of the Madras District Police Force to any other member thereof or to a member of the Madras City Police Force, who is authorized by the Inspector-General of Police by a general or special direction to compel or receive such disclosure or communication; or

(ii) by any member of the Madras City Police Force to any other member thereof or to a member of the Madras District Police Force, who is authorized by the Commissioner of Police by a general or special direction to compel or receive such disclosure or communication.

3. The provisions of rule 1 shall not apply to a disclosure or communication by any member of the Madras District Police Force or of the Madras City Police Force to any person (not being a member of either force) who is authorized by the Governor in his discretion either by a general or special direction in this behalf to receive such disclosure or communication.

4. The provisions of rule 1 shall not apply to a disclosure or communication by a person in the service of the Crown in the Province (other than a member of the Police forces referred to in rule 2) to any person who is authorized by the Governor in his discretion either by a general or special direction in this behalf to receive such disclosure or communication.

5. The provisions of rule 1 shall not apply to a disclosure or communication by any servant of the Crown (not being a police officer) of facts ascertained by himself made to a Superintendent of Police or District Magistrate of a District or to an officer of the Criminal Investigation Department of or above the rank of Sub-Inspector or to any police officer conducting an investigation under the Code of Criminal Procedure, 1898.

6. A servant of the Crown who is in doubt whether in any particular case he is compelled by, or permitted under the provisions of these rules to make a disclosure or communication may before making the disclosure or communication require that the matter be referred for the direction by the Inspector-General of Police, Commissioner of Police or the Governor in his discretion as the case may be.

7. The provisions of rule 1 shall not apply to any disclosure or communication necessitated by the ordinary course of his duties, made by a police officer investigating, under Chapter XIV of the Code of Criminal Procedure, 1898, an offence of which information has been given under S. 154 of that Code.

Directions of the Governor under rules 3 and 4 of the rules issued under S. 58 of the Act

Under rules 3 and 4 of the rules issued under S. 58 of the Government of India Act, 1935 (hereinafter referred to as the said rules), His Excellency the Governor of Madras in his discretion is hereby pleased to authorize—

(i) the undermentioned authorities and officers (not being members of the police forces in the province) to receive from a member of a police force in the province any disclosure or communication referred to in rule 1 of the said rules:—

(1) The Central Intelligence Officer, Madras;

(2) The Central Intelligence Bureau;

(3) The Chief Secretary to the Government of Madras;

(4) The Secretary to the Government of Madras in charge of the subject 'Police';

- (5) A District Magistrate;
- (6) The Special Branches of other Provinces or of Indian States;
- (7) A Public Prosecutor, in accordance with the general or special directions of the Inspector-General of Police or of the Commissioner of Police, Madras City, as the case may be;
- (8) Any other officer or authority whom the Governor may by a special direction authorize in this behalf; and
- (ii) the undermentioned officers to receive from any person in the service of the Crown in the province [not being a member of a police force referred to in paragraph (i)] any disclosure or communication referred to in rule 1 of the said rules:—
 - (1) Any officer of or above the rank of Superintendent of Police in the Madras District Police Force or the Madras City Police Force;
 - (2) Any officer of the Criminal Intelligence Department, Madras, of or above the rank of a Police Sub-Inspector;
 - (3) Any police officer conducting an investigation under the Code of Criminal Procedure, 1898;
 - (4) The Chief Secretary to the Government of Madras;
 - (5) A District Magistrate;
 - (6) Any other officer or authority whom the Governor may by a special direction authorize in this behalf. *For St. George*, April 1, 1937 [G. O. No. 637. (Reforms)].

Conduct of business of Provincial Government.

59. (1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

NOTES.

Cf. S. 17 and notes thereto

Under the Government of India Act, 1919, S. 49 the orders were expressed to be made by the Government of the Province. The form here prescribed follows from the functionary in whom the executive power of the Province is vested.

Rules of Business: Sub-S. (3).—Para. XIII of The Instruments of Instructions specially directs that:

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant

shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

Sub-S. (4).—Speaking on sub-S. (4) *Mr. Butler* said:

"At present under the Constitution the Secretaries to Government have a definitely recognised position, and, in transacting business, it is the custom for Secretaries to Government to forward matters in this way. It would be importing into our intentions under this Clause new implications if we were to consider that we were going behind the ministers' back in this provision. It is following upon the present practice to lay a duty upon the Secretaries to Government to bring matters to the attention of the Governor. It will be no different from the ordinary way of business within a Government department, when, for instance, a Secretary responsible for a particular branch of the administration marks the name of the Governor on a particular file to which the Governor should pay attention. We consider that by giving the secretaries as well as the ministers this duty we are doing something which is perfectly reasonable and which will be understood by those in India who are accustomed to conducting the business of Government. We have no intention of going behind the Minister's back in this particular matter." (*Parl. Deb.*, 299, *Col.* 1497-98).

Rules have been made under the powers conferred by this section, designating the Secretaries, Deputy Secretaries, Under Secretaries and Assistant Secretaries as authorities to authenticate the orders and instruments made in the name of the Governor. The following rule has been issued by the Governor of Madras.

"1. All orders or instruments made or executed by order or on behalf of the Government of Madras shall be expressed to be made by or by order of the Governor of Madras.

2. Save in cases where an officer has been specially empowered to sign an order or instrument of the Government of Madras, every such order or instrument shall be signed by either the Secretary, the Additional Secretary, the Joint Secretary, the Deputy Secretary, the Under Secretary, or the Assistant Secretary to the Government of Madras and such signatures shall be deemed to be the proper authentication of such order or instrument.

3. His Excellency the Governor is also pleased to direct that copies of orders and proceedings of the Government may be authenticated by Superintendents in the departments of the Secretariat in the form shown below." (*Fort St. George*, April 1, 1937 G.O. No. 639, Public (Reforms)).

As has been stated more than once, the Act draws a sharp distinction, between the respective responsibilities of the ministers on the one hand and the Governor when acting in his discretion or in the exercise of his individual judgment on the other and it is proper to expect that though all orders run in the name of the Governor the form or the authority authenticating should indicate with sufficient clearness, the functionary who is responsible for the order or instrument in question. If for instance, the Governor's Secretary were to authenticate all orders issued, not merely the orders of the Governor in his discretion, but all orders where the Governor undertook personal responsibility by overruling his Ministers, in the exercise of his individual judgment, while the Secretaries, etc. to the respective departments authenticated orders issued on ministerial responsibility, the public would be in a position to know the functionary responsible for any particular act or order. Such a rule tending to keep the two responsibilities apart without being blurred would not only be permitted by the Act, but would be in consonance with and carry out its spirit.

CHAPTER III.

THE PROVINCIAL LEGISLATURE.

General.

Constitution of Provincial Legislatures.

60. (1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

NOTES.

Provincial Legislatures—Legislative Assembly and Council

Under the Government of India Act, 1919, all the Legislatures in the various provinces were unicameral. But with the conferment of a larger degree of responsibility the question was mooted whether it was not necessary to have a second chamber, as a counterpoise to democratic ascendancy in the popular and powerful assembly and as affording some protection against hasty and ill-considered legislation and "serving to elicit the sober second thought of the people, in contradistinction to the impulsive first thought of the Lower House.

It was stated in the Committee by Mr. Butler . . .

"There has been close and detailed consideration of the question of Second Chambers from the earliest days of the Statutory Committee. The Statutory Committee set out the arguments on both sides in this matter and came to no final and definite conclusion. The Franchise Committee also considered the matter and came to the same general conclusion as the Statutory Committee; that was not to decide finally on the matter. The Round Table Conference Sub-committee engaged on studying this matter recommended that, generally, the three Provinces of Bengal, the United Provinces and Bihar should have a second Chamber. The result of the discussion in the Joint Select Committee was that the Provinces of Madras and Bombay were added. The result is that the five provinces included in the Bill are having a Bicameral Legislature.

"In all the five cases we have a substantial recommendation from the Provinces that there should be a second chamber. The Joint Select Committee, when they reviewed this matter in detail, decided that it was in the interests of these Provinces or Presidencies that there should be second Chambers. When I come to the case of the Punjab, for example, it may help to explain why there is a difference between the Provinces. The suggestion for a second Chamber in the Punjab was rejected without a division by the local legislature in 1922. Throughout the discussions upon second Chambers there has been very marked opposition to the establishment of a second Chamber in the Punjab and we have not desired to press it absolutely against the expressed wish of the Province. With regard to the other Provinces—Assam, the Central Provinces and Sind—the main argument against the establishment of a second Chamber has been the difficulty of finding personnel to man two Chambers of the legislature satisfactorily, the difficulty of expense and the feeling that in these Provinces, which are rather smaller than the other Provinces, it may not be necessary to the same extent to have two Chambers of the legislature. Those are the reasons why, partly through the history of the case, partly through the needs of the particular Provinces, and partly from the size of certain Provinces and the personnel, we have decided to insert in the Bill the Provinces of Madras, Bombay, Bengal, the United Provinces and Bihar." (*Par. Deb. Vol. 299, Cols. 1504-5*).

A second chamber was created for Assam during the Committee Stage of the Bill.

Legislative Councils: (1) Their Constitution.—Though the communal award did not in terms apply to the Upper Chambers in the Provinces, yet in the distribution of seats, the communal proportions which are outlined in the 'Award' have been generally kept in view. The Upper Chambers have been generally formed on the footing that no "special interests" are to be represented in them as such and as a result there is no provision for the special representation of even women in them. There is however reserved to the Governor power to nominate a small number of members varying from four to ten in the several Provinces. (*See Table at end of Sch. V*) and the Instrument of Instructions prescribes that in exercising this power of nominations.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

Excluding these nominated members all the others are in the case of the provinces other than Bengal and Bihar, directly elected by territorial constituencies which are communally divided into three groups. (i) General, viz., Hindus including Scheduled Castes; (ii) Muhammadans and (iii) Europeans; and each territorial constituency elects the number of members allotted to it of that particular community.

(See Schedule to Government of India (Provincial Legislative Councils) Order, 1936.

In the case of Bengal and Bihar however, besides members elected by territorial communal constituencies as in the case of other provinces, a substantial number of members—27 and 12 respectively—are elected by members of the Legislative Assembly of these respective provinces in accordance with the system of proportional representation by means of the single transferable vote.

The qualifications for membership of the Council are laid down by para. (1) of Sch. V, *viz.*, being a British subject or the ruler or subject of an Indian State which has acceded to the Federation, or the ruler or subject of a prescribed Indian State; being not less than 30 years of age; and possessing other prescribed qualifications. The other qualifications—besides belonging to the particular community (paras. 14 to 16) are prescribed by Order in Council under Para. 17, Sch. V. See Provincial Legislative Councils Orders. It may generally be stated that the councils are elected by an electorate with high properly qualifications.

The legislative Councils are permanent bodies not subject to dissolution. The members hold their seats for 9 years and one-third of the body goes out every 3 years. Provision is made for determining the members who hold office for 3 and 6 years among those who are elected to the first Council. As the function of these Chambers is really to delay the passing of legislation with which they might not agree, and as conflicts between the two Chambers are resolved through the machinery of joint sittings, the strength of these Chambers have been fixed low as compared with the popularly elected lower Chambers. The relative strength of the Chambers varies from province to province, but generally the strength of the Upper House is about a fourth or fifth of that of the lower.

For the functions of these Chambers see Notes to Ss. 73 and 74, *infra*.

Amendment of the Provisions relating to the Second Chambers.—S. 308 provides for a Provincial legislature after the expiry of 10 years from the coming into force of Part III, *i.e.*, April 1937, passing resolutions on motions, proposed by a minister on behalf of the Council of Ministers, recommending an amendment of the provisions of this Act relating to the number of Chambers in a Provincial Legislature, the size or composition of the Chamber, etc., and for the presentation to the Governor of an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament. The Secretary of State is thereupon directed to cause to be laid before both Houses of Parliament within 6 months after the communication of the resolution a statement of any action which it may be proposed to take thereon.

See S. 308 for further notes.

61. (1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act.

(2) Every Legislative Assembly or every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

NOTES.

Composition of the Chambers.—See Notes to Sch. V.

Term of the Assembly.—Under S. 72-B of the Government of India Act 1919 the duration of the Provincial Assembly was 3 years, subject to the power of the Governor to extend it for a period of one year by notification if in special circumstances only he thought fit to do so; and the limitation of the power of extension to 1 year was removed by 23 and 24 Geo. V, c. 23.

Under the Present Act, there is no power in the Governor or in any other body to extend the duration of the assembly.

Legislative Council.—The members of the Legislative Council hold their office for a term of 9 years one third of the body retiring every three years. See Sch. V, Rule 18.

62. (1) The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

Sessions of the Legislature, prorogation and dissolution.

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time—

(a) summon the Chambers of either Chamber to meet at such time and place as he thinks fit;

(b) prorogue the Chamber or Chambers;

(c) dissolve the Legislative Assembly.

(3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act.

NOTES.

Cf. S. 19, *supra* and notes thereto.

Summoning, Prorogation and Dissolution.

Sub-S. (1).—This sub-section is founded on similar wording in all the Dominion Constitutions.

This is merely a formal provision, and there is no intention that the Governor should not summon the Legislature for a particular period. (*Parl. Deb. Vol. 299. Col. 1519.*)

It was stated on behalf of the Government:

"There is no intention that the Governor should dispense with the sittings of the Provincial Legislature. The difficulty arises out of the particular situation in India. In India very often the Provincial Legislature will meet in the month of February and sit, say to the end of March. There are then climatic conditions, which make it extremely uncomfortable to conduct business, and the result is that there sometimes occurs a period of over six months between one session of the Legislature and another." (*Parl. Deb. Vol. 299, Col. 1519.*)

It is certainly not the intention that this power to postpone the sittings of the Assembly to the period specified should be utilised in order to keep in office a ministry which has ceased to command the confidence of the legislature, or to prevent the legislature from expressing its opinions on questions of importance. (See Statement in Parliament quoted in Notes to S. 88).

Power to dissolve.—The Governor's power to dissolve the Assembly is to be exercised 'in his discretion' and thus the constitutional problems and controversies raised in the Colonies and Dominions as to the limits of the Governor's power of dissolution and as to how far he can disregard the advice of his ministry insisting on dissolution or otherwise cannot arise for consideration. But dissolution is an extreme step and cannot be ordered unless the Governor was properly satisfied that the legislature does not reflect the views of the electorate and the country on any vital question. Where a ministry has forfeited the confidence of the legislature, it will not be legitimate for the Governor to straightway order a dissolution of the Assembly without exploring the possibility of forming another ministry who may command the confidence of the Legislature. A dissolution ordered solely with intent of retaining in power particular ministers in office would not seem to be a legitimate use of this power. (Cf. Todd-Parliamentary Government in the Colonies, 2nd Edn. p. 774).

63. (1) The Governor may in his discretion address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members.

Right of Governor to address, and send messages to Chambers.

(2) The Governor may in his discretion send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber

to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration

NOTES.

Cf. S. 20 and Notes thereto.

64. Every minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

NOTES.

Cf. Section 21.

To the persons who can speak but not vote must be added 'the official' appointed by the Governor under S. 57 (2), when owing to the peace of a province being threatened by terrorist crimes, he takes over to himself the administration of any department or departments.

65. (1) Every Provincial Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly; but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature, and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section (other than the proviso to sub-section (2) thereof shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles "President" and "Deputy President" for the titles "Speaker" and

"Deputy Speaker" respectively, and with the substitution of references to the Council for references to the Assembly.

NOTES.

Cf. S. 22, supra.

Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

66. (1) Save as in this Act otherwise expressly provided, all questions in a Chamber, or a joint sitting of two Chambers of a Provincial Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or President, or person acting as such.

The Speaker or President, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth of the total number of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than ten members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one sixth of the members, or, as the case may be, at least ten members, are present.

NOTES.

"Save as otherwise expressly provided" —The reference is to (1) Resolutions expressing want of confidence in the President or Deputy-President, Speaker or Deputy Speaker which under S. 65 (2) require an absolute majority of the members of the Council or Assembly; (2) S. 83 which requires a majority which includes at least three-fourths of the members of the Assembly before a grant for the education of the Europeans or Anglo-Indian Communities is reduced.

Cf. See notes to S. 23, supra.

The quorum for the Upper Houses in the Provinces is fixed at 10 members—without regard to the strength of the House. In Bengal this works at less than one sixth, while in Bombay and Bihar at a third, while in the case of Assam, it is nearly one half of the total strength—which must be very inconvenient.

Provisions as to Members of Legislature.

67. Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

NOTES.

See Notes to S. 24, *supra*.

As already stated, *vide* notes to S. 47, the members in the Assembly of the Central Provinces and Berar representing the territorial constituencies in Berar take the oath and in the form 3 of Sched. IV excepting their allegiance to the Nizam.

68. (1) No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature, and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.

(3) If a member of a Chamber—

(a) becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section; or

(b) by writing under his hand addressed to the Governor resigns his seat,

his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

NOTES.

Sub-S. (2).—This sub-section continues the rule under the Government of India Act, 1919, prohibiting a person from being a member of both of the Central and Provincial legislatures. Under Rule 4 (2) of the Government of India (commencement, etc.) Order 1936, the reference to the Federal Legislature is till the commencement of Part II of the Act to be construed as a reference to the Indian Legislature.

Cf. S. 25, supra and notes thereto.

69. (1) A person shall be disqualified for being chosen as, and for being member of a Provincial Legislative Assembly or Legislative Council—

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act;

(e) if, whether before or after the commencement of this Part of this Act, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release;

(f) if, having been nominated as a candidate for the general or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor, acting in his discretion, has removed the disqualification:

Provided that a disqualification under paragraph (f) of this sub-section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of sub-section (1) of this section is at the date of the disqualification a member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.

NOTES.

See Notes to S. 26, *supra*

70. If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province.

NOTES.

See S. 27 and notes thereto.

The Union of South Africa Act in S. 55 which enacts a similar penalty provides for the same being imposed only in the event of the person "knowing or having reasonable grounds for knowing that he is so disqualified". S. 70, like S. 27 is in its terms absolute and it would be a matter of doubt whether a similar qualification as to knowledge could be imported into these sections. The result of this would be that where for instance the election of a member is challenged on the ground of his being subject to any of the disqualifications mentioned in S. 69, and the election is ultimately set aside on such ground, the member would be liable for the penalty named in the section for having taken part in the proceedings of the Chambers while disqualified, notwithstanding his *bona fide* belief in his right to sit and vote in the House.

As to power to remit penalties *cf.* *Commercial Cable Co. v. Government of Newfoundland*; (1916) 2 A.C. 610.

71. (1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province.

(3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner,

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown of India, and safeguarding confidential matter from disclosure, as may be made by the Governor exercising his individual judgment.

(5) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the proceedings of a Chamber as they apply in relation to members of the Legislature.

NOTES.

See S. 28, *supra* and notes thereto.

72. Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislature, and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of the Province.

NOTES.

Cf. S. 29, supra.

Legislative Procedure.

73. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council.

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof.

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is pending in the Legislative Assembly of a Province, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

74. (1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.

(2) If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that, if it appears to the Governor that the Bill relates to finance or affects the discharge of any of his special responsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

The functions of the Governor under the proviso to this sub-section shall be exercised by him in his discretion.

If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

NOTES.

Sub-S. (2).—Where a Bill originates in the Legislative Council and is passed by that Chamber, but fails to secure the assent of the Legislative Assembly, the measure cannot be brought before a Joint Session. The machinery of the Joint Session is confined to Bills originating in the lower house or Assembly, which are not passed by the Legislative Council.

Financial Bills cannot originate in the Legislative Council.

See further Notes to S. 31, *supra*.

75. A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General.

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly.

NOTES.

Assent to Bills—When the Governor assents to a Bill passed by the Legislature, it forthwith becomes an Act, and it does not need the assent of the Governor-General as under S. 81 (3) of the Government of India Act, 1919.

Reservation of Bills—Under the Government of India Act, 1919, by rules framed under S. 81-A, Governors of Provinces were directed to reserve for the consideration of the Governor-General any Bill passed by the Legislative Council of the Province, if the Bill appears to the Governor to contain provisions in respect of which it has not been previously sanctioned by the Governor-General under S. 81-A (3)—

(a) affecting the religion or religious rites of any class of British subjects in British India;

(b) regulating the constitution or functions of any University,

(c) having the effect of including within a transferred subject-matters which have hitherto been classified as reserved subjects, or

(d) providing for the construction or management of a light or feeder railway or tramway other than a tramway within municipal limits, or

(e) (i) affecting the land revenue of a province either so as to prescribe a period or periods within which any temporarily settled estate or estates may not be re-assessed to land revenue, or

(ii) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or

(iii) modify materially the general principles upon which land revenue has hitherto been assessed if such prescription, limitation or modification appears to the Governor to be likely seriously to affect the public revenues of the province.

The Governor had an option to reserve bills affecting any matter wherewith they were specially charged under the Instrument of Instructions or affecting any Central subject or the interest of another province. Even in respect of these there need be no reservation if the bill or provision had obtained the previous sanction of the Governor-General prior to introduction.

Under the present Act (see also notes to S. 32, *supra*) the nature of the measures which are required to be reserved is not specified. The Governor is given a free hand to decide the matter and the Instrument of Instructions (Para. XVII) however requires him, without prejudice to the generality of his powers to reserve.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;

(c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;

(d) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill.

The reservation of Provincial Bills is for the consideration of the Governor-General, and in this it follows the provision in the Constitution of Canada (British North America Act S. 90); but unlike as in Canada the Governor-General has no power to disallow Provincial Acts. In the case of the States forming part of the Australian Commonwealth the position is different. The pre-existing identity of the States as independent Colonies is recognised in the Federal Constitution of the Commonwealth and the Laws of each state are preserved to them by the Commonwealth Act, 1900, S. 106. The reservation by the State Governors is therefore for the consideration of *His Majesty* and not of the Governor-General. See the Australian States Constitutions Act, 1907. (7 Edw. 7, c. 7, S. 1).

It will be noticed that a Provincial Governor cannot directly reserve a Bill for the signification of His Majesty's pleasure.

76. (1) When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General shall in his discretion declare, either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure thereon:

Bills reserved for consideration.

Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be, the Chambers, of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them with or without amendment, it shall be presented again to the Governor-General for his consideration.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto.

NOTES.

See Notes to S. 32, *supra*.

When a Bill passed in the Legislature of a Province is reserved for the consideration of the Governor-General he has the same rights in relation to such Bill, as he has in respect of Bills passed in the Federal Legislature under S. 32; and in those matters he acts 'in his discretion'.

In respect of Bills not reserved to him the Governor-General can exercise no powers, he having no power of disallowance as is reserved to His Majesty. But as the Governor, in declaring his assent or veto to the Bill is "acting in his discretion," it would perhaps be competent to the Governor-General to give directions to the Governor under S. 54 in any particular case.

77. Any Act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent, and where any Act is so disallowed the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void.

Power of Crown to disallow Acts.

NOTES.

See Notes to S. 32, *supra*.

Procedure in Financial matters.

78. (1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this Part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Province, and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of each Province—

(a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council;

(b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(c) the salaries and allowances of ministers, and of the Advocate-General;

(d) expenditure in respect of the salaries and allowances of judges of any High Court;

(e) expenditure connected with the administration of any areas which are for the time being excluded areas;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.

NOTES.

The 'annual financial statement' or the Budget is laid before both the Chambers in provinces with bicameral legislature. But the demands for grants are submitted for the vote of the Assembly alone.

Under the India and Burma (Transitory Provisions) order 1937, Rule 4 (b), "Any expenditure from provincial revenues, the amount of which is prescribed by or under any Law as in force immediately before the commencement of Part III, shall in the two financial years following the commencement of the said part, be deemed to be expenditure charged on the revenues of the Province."

Salaries and Allowances of Ministers.—See Notes to S. 33, *supra*. The power of the legislature to fix the salaries of ministers is provided by S. 51 (3) and the fixation by the Governor is provisional only. When however it is fixed by an Act, it is not liable to be varied during the term of that ministry.

79. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislature

Procedure in Legislature with respect to estimates.

of those estimates other than estimates relating to expenditure referred to in paragraph (a) of sub-section (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

NOTES.

Cf. S. 34 and notes.

Demands for grants in the Federal Centre have to be passed by both the Assembly and the Council of State and the two Houses are bodies with co-ordinate powers. But in the Provinces, the second Chambers have no power in connection with demands

Authentication of schedule of authorised expenditure. 80. (1) The Governor shall authenticate by his signature a schedule specifying—

(a) the grants made by the Assembly under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers:

Provided that, if the Assembly have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

NOTES.

See Notes to S. 35.

Transitional Provision.—The Governor of each Province is however empowered at his discretion to authorise such expenditure from the revenues of the Province as he deems necessary to enable the business of the Provincial Government to be carried on between the Commencement of Part III and the date on which a schedule of authorised expenditure is authenticated in accordance with the provisions of this section or until the expiration of 6 months from the commencement of Part III whichever first occurs. But without the consent of the Governor-General in his discretion, the expenditure so authorised is not to exceed one half of the total expenditure from the revenues of the Province in the previous financial year. The expenditure thus authorised by the Governor is directed to be included in the appropriate heads of the first estimates of expenditure laid before the Provincial Legislature under S. 78 and the provisions of Ss. 78 to 80 are made applicable thereto. But with this saving that money which is already expended before the date of authentication under this section and liabilities incurred prior to that date are to be deemed to be duly authorised notwithstanding that it may not be included in the authenticated schedule (Rule 5, Government of India (Commencement, Etc.) Order, 1936.

81. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

NOTES.

See Notes to S. 36.

Special provisions as to financial Bills.

82. (1) A Bill or amendment making provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.

NOTES.

See Notes to S. 37.

Rule 6 Government of India (Commencement, &c.), Order 1936, empowers the Governor in his discretion, by public notification, to continue for a period not exceeding twelve months from the Commencement of Part III any taxation which was being levied for the purpose of the Province and would otherwise expire, without prejudice to the powers of the Legislature to impose or remit taxes.

83. (1) If in the last complete financial year before the commencement of this Part of this Act a grant for the benefit of the Anglo-Indian and European communities or either of them was included in the grants made in any Province for education, then in each subsequent financial year not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which includes at least three-fourths of the members of the Assembly, a grant shall be made for the benefit of the said community or communities not less in amount than the average of the grants made for its or their benefit in the ten financial years ending on the thirty-first day of March, nineteen hundred and thirty-three:

Provided that, if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province in the said ten financial years, then, whatever fraction the former may be of the latter, any grant made under this subsection in that

financial year for the benefit of the said community or communities need not exceed that fraction of the average of the grants made for its or their benefit in the said ten financial years.

In computing for the purposes of this subsection the amount of any grants, grants for capital purposes shall be included.

(2) The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by a majority which includes at least three-fourths of the members of the Assembly that those provisions shall cease to have effect.

(3) Nothing in this section affects the special responsibility of the Governor of a Province for the safeguarding of the legitimate interests of minorities.

NOTES.

Safeguard for Anglo-Indians.—The Joint Parliamentary Committee and Parliament were anxious to provide special safeguards for the benefit of the Anglo-Indians, "a very small community which has established a strong claim to consideration by its record of public service." Accordingly, besides the general safeguard secured to all minorities by reason of Governor's and Governor-General's special responsibility to protect the legitimate interests of minorities we have the following special safeguards provided for this community.

(1) Reservation of seats in the Provincial and Central Assemblies.

(2) In making appointments in the Railway, Customs, Postal and Telegraph Services, regard is to be had to class, character and numerical percentage of the posts hitherto held by members of that community and the remuneration attaching to such posts, thus statutorily adopting the resolution of the Home department of the Government of India dated 4th July 1934, fixing the minimum percentage of posts that is to be held by the community. See S. 242 (2) and (3).

(3) The special provision in regard to Educational Grants.

The proportion which the average of the total grants made for education in the decade 1923-1933 (which is taken as basic) bears to the average of the grant made for the education of the Anglo-Indian and European Communities during that decade is taken as the percentage on which the communities are entitled to insist in the future.

Sub-Section (2):—If the resolution is passed by the requisite majority of three fourths of the Assembly, and the Governor does not deem it necessary to interfere 'in exercise of his special responsibilities' the fetter imposed by sub-S. (1) will be released—not merely for the year in question but for ever.

The terms 'Anglo-Indians' and 'Europeans' are not defined in the body of the Act; but in Para. 26 of Part I of Schedule I, they are thus defined.

"A European" means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India;

"an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India.

In the absence of any different definition in the Act, the words should be understood in the sense set out in the schedule.

A question of some importance arises by the terms of S. 110, sub-S. (b) (ii) which enacts that the Federal or Provincial Legislature is not empowered to make any law amending any provision of this Act, except in so far as is expressly permitted by any *subsequent* provision of this Act. The sub-clause was expressed in that form to allay the apprehensions felt by some members that the Indian Legislature might attempt to alter the provisions of this Act by reason of the provision of S. 108 (1) (a)—which impliedly permits the legislature to repeal or amend Acts of Parliament applicable to India and the expression *subsequent* was used to exclude the powers conferred by S. 108. Evidently the existence of S. 83 which expressly permits alteration of the provisions of this Act by resolutions passed by the requisite majorities was forgotten. It would however seem that, notwithstanding the terms of S. 110, this power can be exercised as the restrictions imposed by the Chapter (Part V, ch. 2) are restrictions on "Legislative Powers". See the Heading of the Chapter. The

power conferred by the sub-section is not strictly speaking a "legislative power", but is exercisable by resolution and in Provinces which have a legislative Council, it is sufficient if the resolution is passed by the Lower House.

Procedurē generally.

84. (1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business:

Rules of procedure. Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules—

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;

(b) for securing the timely completion of financial business;

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;

(d) for prohibiting, save with the consent of the Governor in his discretion—

(i) the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area; or

(iii) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding sub-section as the Governor in his discretion may think fit.

(3) Until rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion.

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

NOTES.

S. 84, (1) (d) ii.—"excluded area": See Ss. 91 and 92. The Bill proposed to ban discussion in respect of the administration of "partially excluded areas" also. Explaining the reasons for omitting "partially excluded areas" from the operation of the prohibition *Sir S. Hoare* said:

"There are two types of excluded areas—excluded areas being backward tracts, not susceptible to Parliamentary institutions. Under the proposals in the Bill there will be totally excluded areas and partially excluded areas. The totally excluded areas which are very few will be administered by the Governors. There are, really, only two substantial tracts as far as I can remember in the whole of India, which, being so remote from association of any kind with Parliamentary institutions, are it is considered, better kept out of the Parliamentary system altogether. In the case of the totally excluded areas therefore, there would be no discussions on administration in the Provincial Council. The Joint Select Committee took the view that very often discussions of that kind would be extremely dangerous, say, in connection with the tracts like the hill tracts in the North East of India. My Amendment proposes to draw a distinction between those areas and what we call the 'partially excluded areas,' the areas which are not so backward and concerning which Parliamentary discussion will not be a risky affair. The Amendment proposes to allow freer discussion of the affairs of the 'partially excluded' areas. It will enable the Councils to discuss those affairs without the previous assent of the Governor." (*Par. Deb. Vol. 299, Cols. 1528-29.*)

S. 84 (1) (d) (iii): Prohibition of discussion on questions regarding personal conduct of Rulers and members of the ruling family.—It was suggested in the Commons during the Committee stage that the prohibition against discussion of the conduct of the members of the Ruling family went too far, as the expression "member of the family" was vague and might take in a large number of relations remotely connected with the Ruler. It was however explained:

The term "a member of ruling family" in India at any rate, is a term of art, and the family is restricted to the ruling Prince and the one or two members of his

the definition would cover too wide a field. (*Pa*)

Cf. S. 38, supra and notes thereto.

English to be used **85.** All proceedings in the Legislature of a Province shall be conducted in the English language.

Provided that the rules of procedure of the Chamber or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

NOTES.

Cf. S. 39, supra and notes thereto.

86. (1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties.

Restrictions on discussion in the Legislature

In this sub-section the reference to a High Court shall be construed as including a reference to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the discretion.

NOTES.

Sub-S. (1): Discussion of Conduct of Judges.—The contrast between the language of the prohibition in S. 84 (c) and (d) against "*the discussion of or the asking of question on*" and that in this section, shows that a *question* may be asked, subject to any rules which the Chambers might frame for themselves under S. 84 (1), with respect to the conduct of any judge of the Federal Court or High Court. The purpose of a 'question' is merely to elicit information and there can be no discussion thereon, unless any substantive motion or resolution is proposed in relation to it and it is these latter alone that are within the prohibition.

Sub-S (2).—The Instrument of Instructions directs the Governor not to exercise the power to stay proceedings in respect to a Bill, unless in his judgment, "the public discussion of the Bill, Clause or amendment would itself endanger peace and tranquillity."

87. (1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not to inquire into proceedings of the Legislature.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

NOTES.

Immunity of Officers, etc., of the Legislature from jurisdiction of Courts.—The language of the immunity enacted by the Section is so wide as to place the officers of the Legislature practically above the law, and would seem to extend even to cases of irregular or purported exercise of powers.

See Notes to S. 41, *supra*.

CHAPTER IV.

LEGISLATIVE POWERS OF GOVERNOR.

88. (1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Power of Governor to promulgate ordinances during recess of Legislature.

Provided that the Governor—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature; and

(b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

NOTES.

Ordinances during Recess: Dealing with the Ordinances under this section it was said: "We are dealing with ordinances made upon the advice of Ministers. They are ordinances made in the field of special responsibility by the Governor, which are the kind of Ordinances that would be made here by the Government in a time of emergency as to which the Government of the day has to obtain parliamentary approval within a given time. I think the real check is the check of ministerial responsibility to the Provincial Council. These ordinances are made upon the advice of Ministers who are themselves responsible to the Provincial Council." (*Par. Deb. Vol. 299, Col. 1532.*)

Under S. 62 it is the Governor acting in his discretion that summons the Legislature and therefore it is possible for a Governor not to summon the Legislature for a period of 12 months. But it "would be very unlikely that the Governor, responsible to the Legislature and its life dependent upon the Legislature, would be anxious to keep the Legislature out of any action in the matter. The position is exactly the same as the position in this country, when within the knowledge of Hon. Members, the Government of the day has taken action under the Emergency Powers Act. The Government in their own defence have called together Parliament at an early date in order to get sanction for their action." (*Par. Deb., Vol. 299, Col. 1533.*)

See further notes to S. 42, *supra*

89. (1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion, or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature :

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an

Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion:

Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

NOTES.

The rationale and necessity for the power conferred by this section was thus explained on behalf of the Government to the committee of the House of Commons.

"This Bill sets up substantially Provincial autonomy, and the administration is carried on by Ministers. The Committee has already passed a clause which places on the Governor certain special responsibilities. Obviously, you cannot place special responsibilities on a man unless you give him the means of fulfilling those responsibilities. So far as executive action is concerned, and any executive action taken is in his name, he can, of course, act in his individual judgment or discretion if the Bill empowers him to do so, but, obviously also, if you look at the special responsibilities placed upon him, occasions may arise where, in order to fulfil those responsibilities, it is necessary for him to proceed by ordinance. Therefore, everyone on the Committee, wherever he sits, and whatever his general views about democracy, must agree that, granted that these special responsibilities are to be placed on the Governor, it is quite clear that, in order to fulfil them, it may be necessary for him to proceed by Ordinance. Therefore, it would be quite wrong to put the responsibility upon him and not to confer the Ordinance-making power. The Committee having passed Clause 52 and the other Clauses giving the Governor special responsibilities, that must be unanswerable." (*Par. Deb. Vol. 299, Col. 1542.*)

Under the Government of India Act, 1919, S. 72 the power of promulgating Ordinances was vested only in the Governor-General and Provincial Governors had no such power. If any such ordinance was needed for any particular Province, it had to be passed by the Governor-General.

Sub-S. (4): Proviso.—The reference here is to the procedure prescribed by S. 107 (2), *infra* for rendering a law enacted by the Provincial Legislature in respect of a matter in the concurrent list prevail over a Federal Law.

Sub-S. (5): Concurrence of Governor-General.—The Governor acts under the control of the Governor-General in regard to matters in which he is directed by the Act to act 'in his discretion' or 'in the exercise of his individual judgment'. (See S. 54) and it therefore follows that in such an important matter as the exercise of extra-Parliamentary legislative powers he should have the concurrence of the Governor-General therefor. See also, sub-S. (5) of S. 90.

"There are some people who think that only the Governor-General ought to issue ordinances, and there are other people who think that it should be done by the Provincial Governor. The Joint Select Committee took the view that the wise course would be to make the Governor of the Province primarily responsible, their reason being that law and order is a provincial subject, and that therefore the Governor is the person mainly responsible for its maintenance, but in order to ensure that the Governor should not act rashly or independently of the general policy of the Governor-General—after all, an emergency of this kind is a very important moment—the Governor should have his concurrence. The Committee took the view that there need be no undue delay in the Governor-General giving his concurrence. He could give it by telegram or telephone, and therefore there was no need why the concurrence of the Governor-General should hold up action which in the nature of things ought to be urgent." (*Parl. Deb. Vol. 299, Col. 1535.*)

See Notes to S. 43, *supra*.

90. (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential and either—

(a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may, at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void:

Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion, but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

NOTES.

Explaining the necessity for the Governor to have power to enact Acts it was stated on behalf of the Government:

"This question of giving the Governor power to enact an Act is also regarded by His Majesty's Government as necessary in order that the Governor may have all the powers necessary for dealing with every contingency. We do not anticipate that this power to enact Acts will be one that will be used very frequently. In fact, if the Committee will refer to the report of the Joint Select Committee, they will see that in paragraph 104, the Joint Select Committee say:

"If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the Legislature to pass it, but in the unwillingness of his Ministers to sponsor it his remedy lies, not in a Governor's Act, but in a change of Ministry."

"That shows that this power is not one intended for daily use. The object, I think, is best illustrated by taking the example of terrorism. In the case of terrorism it is a well-known fact that if, for example, the terrorists consider that a power taken by the Executive is likely to be terminated very shortly, all that the terrorists or those who are conspiring against the Government need do is to lie low for a short period, and raise their heads again after the time which the Executive

have announced as the termination of the Ordinance. In the case of an Act, the Governor could take the opportunity of putting upon the Statute Book some permanent legislation with the object of dealing on a permanent basis with such a grave menace to the peace and tranquillity of the Province. In the case of a long-term question such as terrorism, than which there is no greater menace to the stability of a Province, we feel that we must arm the Governor with powers of this sort. I repeat that we do not intend that this power should be frequently used, but I think the Committee will agree that it is a power which the Governor ought to have."

Sub-S. (3): Proviso.—See note to Proviso to sub-S. 4 of S. 89.

Sub-S. (5).—Concurrence of Governor-General. See notes to sub-S. (5) of S. 89. Cf. S. 44, *supra* and notes.

CHAPTER V.

EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS.

91. (1) In this Act the expressions "excluded area" and "partially excluded area" mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this subsection before Parliament within six months from the passing of this Act.

(2) His Majesty may at any time by Order in Council,

(a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area;

(b) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area;

(c) alter, but only by way of rectification of boundaries, any excluded or partially excluded area;

(d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area,

and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under subsection (1) of this section shall not be varied by any subsequent Order.

92. (1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provin-

cial Legislature, or any existing Indian law, which is for the time being applicable to the area in question.

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

NOTES.

Ss. 91 & 92.—There two sections deal with the delimitation and administration of the areas which under the earlier legislation were termed "Scheduled Districts" or "Backward tracts".

The "Scheduled Districts".—"The Indian Statute Book has from the earliest times contained 'deregulationising enactments, i.e. enactments barring, completely or partially the application in the more backward or less civilised parts of the country of the Ordinary Law, which was at first contained in the old regulations passed by legislative bodies created under the various charters. For these areas Laws were enacted by the Executive under the view that the Governor-General in Council had power to make laws for these territories by executive orders corresponding to the Orders in Council by the Crown. Doubts were raised as to the validity of this executive Legislation and the Indian Councils Act of 1861, validated the previous Regulations by declaring that no rule, law or regulation made before the passing of the Act by the Governor-General or certain other authorities shall be deemed invalid by reason of not having been made in conformity with the provisions of the Charter Acts'. But this power of legislation was taken away for the future. But the Government of India Act 1870, (33 & 34 Vict., c. 3) however practically restored this power by enabling the Governor-General in Council to legislate in a summary manner for the less advanced parts of India. The machinery adopted was this. The Secretary of State in Council, by resolution declares the provisions of S. 1 of the Act of 1870 applicable to some particular part of a British Indian Province. Thereupon the Governor in Council, Lieutenant Governor or Chief Commissioner may at any time propose to the Governor-General in Council drafts of regulations for the peace and good government of that part and these drafts when approved and assented to by the Governor-General in Council and duly gazetted have the same force of Law as if they had been passed by the Legislative Council. (It is this power that was set out in S. 71 of the Government of India Act 1915). The enactments in force in these areas took varied and sometimes very complicated forms, so that in course of time doubts arose and it became a matter of considerable difficulty to ascertain what laws were and what were not in force in the deregulationised tracts. The main object of the Scheduled Districts Act XIV of 1874, was to provide a method of removing these doubts by means of notifications to be issued by the executive Government. The preamble to that Act refers to the fact that 'various parts of British India have never been brought within or had from time to time been removed by the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of judicature' that 'doubts had arisen in some cases as to which Acts or Regulations were in force in such parts and in other cases as to what were the boundaries of such parts, and that 'it was expedient to provide readier means of ascertaining the enactments in force in such territories and the boundaries thereof and for administering the law therein'. The Act then proceeded to specify and constitute a number of tracts as 'scheduled tracts' and gave the power to the Local Government to declare by notification what enactments are and are not in force in any scheduled District, and to provide for extending by notification to any scheduled District with or without modification or restrictions any enactments in force in any part of British India at the date of the notification. A 'scheduled district' is defined in the Act as meaning a district scheduled to the Act and 'every District to which 33 and 34 Vict., c. 3, S. 1, is made applicable.

Ilbert Government of India. 33 and 34 Vict., c. 3, was repealed by the Government of India Act 1915 and was re-enacted in S. 71, which made provision both for the executive legislation, and for areas to be designated from time to time by the Secretary of State by resolution, as areas to which the section would be applicable.

Backward Tracts.—The Government of India Act 1919, enacted a modification in this procedure and empowered the Governor-General in Council to declare any territory in India to be a 'backward tract', and with the sanction by notification, of the Secretary of State, direct that the Government of India Act shall to that territory be subject to such exceptions and modifications as may be prescribed in the notification. S. 52-A (2).

Where the aforesaid notifications have been published, the Governor-General may direct that any Act of the Indian Legislature shall not apply to the territory in question or to any part thereof, or apply only subject to such qualifications and modifications as may be prescribed, and he could also empower the Local Governors to give such directions in respect of Acts of the local legislature. The power of the Governor-General in Council to legislate for these areas by regulations under S. 71, still remained. In exercise of this power certain areas including in Madras the Laccadive Islands and Minicoy, in Bengal, the Chittagong hill tracts, in the Punjab, Spiti and in Bihar and Orissa the Angul District were excluded from the legislative power of the Central and Provincial Legislatures. Proposals for expenditure of these areas were not required to be submitted to the vote of the Legislative Assemblies of the provinces. The sanction of the Governor was made a pre-requisite before any question relating to the administration of these areas could be asked, and in respect of these areas no subject was to be deemed a transferred subject.

There were however other areas *e.g.*, the Ganjam, Vizagapatam and Godavery Agencies in Madras, where the Governor merely retained power to apply Acts of the Legislature with such modifications as he chose.

Excluded Areas in the Government of India Bill.—In the Bill of the Government of India Act 1935 the distinction indicated in the White Paper of 1931 between totally excluded areas and partially excluded areas was drawn and the areas constituting the two classes were laid down in a schedule (Schedule VI), which is here extracted for convenience of reference.

Schedule VI, Govern-
ment of India Bill.

SIXTH SCHEDULE.

EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS.

PART I.

Excluded Areas.

The North-East Frontier (Sadiya, Balipara, and Lakhimpur) Tracts.
The Naga Hills District.
The Jaintia Hills District.
The Chittagong Hill Tracts.

PART II.

Partially Excluded Areas.

The North Cachar Hills (in the Cachar District).
The Garo Hills District.
The Mikir Hills (in Nowgong and Sibhsagar Districts).
The British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment. ...
The District of Angul.
The Chota Nagpur Division.
The District of Sambalpur.
The Santal Parganas District.
The Darjeeling District.
The Laccadive Islands, including Minicoy.
The Ganjam, Vizagapatam and Godavari Agencies.

But during the discussion in the Committee of the House of Commons objection was raised by several members, including those who usually supported the Government

that the list was too meagre, and that large classes of backward peoples were thereby being abandoned to the control of Indian legislatures and Ministers, and in deference to their wishes, the whole schedule was withdrawn, the Government agreeing to reconsider the whole position and specify the areas in an Order in Council to be introduced later. Accordingly the areas were specified in the 'Excluded areas Order in Council 1936' and the areas excluded from the Provincial Legislature were enlarged. See the Order in Council *infra*.

Excluded and Partially Excluded Areas.—The principle adopted in the selection of these areas was that where there was an enclave or a definite tract of country inhabited by a compact aboriginal population, it was classified as an excluded area. Where however the aboriginal population was mixed up with the rest of the agricultural communities, and the aborigines were substantial enough in numbers, the area was classified as 'partially excluded'.

"Total exclusion implied that those areas will come under the Governor in his discretion and that therefore the administration of the areas will be a direct responsibility of the Governor himself and therefore the general principle upon which we have come to the decision with regard to total exclusion is that those areas should be few and be selected with great care and that their total exclusion should be justified." (*Parl. Deb. Vol. 301, Col. 1395*).

Explaining the machinery of the two sections and the distinction between the excluded and the partially excluded areas it was stated in the Committee: "We have scheduled certain districts for which the Governor will be directly responsible. Those districts are set out in the Schedule. They cover, in our view, the districts that ought to be withdrawn from ordinary Parliamentary institutions. The Rt. Hon. and gallant Gentleman is quite right in saying that they do not cover the whole population of the backward peoples of India, but they do cover the populations which are self-contained but the difficulty is that of dealing with the scattered populations. Even there, however, we have not left ourselves defenceless. The Governor will have the responsibility of protecting them. Where there are these enclaves we draw a distinction between the enclaves which are so backward that no kind of Parliamentary institution or Parliamentary Legislation ought to apply to them and they are set out in the Schedule. In the second category we have placed people who are less backward and to whom certain laws might from time to time be applied with the Governor's previous assent. In both cases, therefore, we have taken what I believe to be very full precautions." (*Parl. Deb. Vol. 299, Col. 1552-53*).

The point of distinction between an "Excluded area" and a "Partially excluded area" is that while both classes of areas are excluded from the competence of provincial and Federal Legislatures, the administration of excluded areas is vested in the Governors acting in their discretion, while the partially excluded areas is vested in the control of the Ministers, subject however to the Governor exercising his individual judgment (S. 52 (1) (c)). The excluded areas thus remain as the last vestige of dyarchy in the Provinces, and the expenses incurred in the administration of these areas are charged on the revenues of the Province and are therefore non-votable.

Machinery for transfer of areas.—Speaking of the necessity for the existence of machinery for the transference of these areas to the category of normal areas it was said: "It might well be that in the course of time, even though the more conservative of us might not wish to see it that changes will take place in some of these areas. There is bound to be infiltration from one district to another, and in the course of time, we may be able to bring certain of these districts under the ordinary administration. In that case there ought to be power to make the transfer and the powers ought to be exercised in such a way that there is Parliamentary protection behind the transferred area. We ensure that the transfer can only be undertaken by an Order in Council, which has to obtain the approval of both Houses. (*Parl. Deb. Vol. 299, Cols. 1553-54*).

But the areas specified by the present Order in Council cannot be enlarged by any subsequent Order in Council and further 'a partially excluded area' cannot be transferred to the category of 'excluded area'. The power of His Majesty to direct by Order in Council is confined to (i) transferring excluded areas to partially excluded areas, (ii) and partially excluded areas to the normal areas of the Province.

Expenditure in relation to the areas.—The expenditure in connection with partially excluded areas is votable, but by virtue of the administration being a special responsibility of the Governor, he has the power to restore grants under the proviso to S. 80 (1).

Powers of the Governor.—Para. XV of the Instrument of Instructions sets out the manner in which he is to exercise his powers in relation to these areas. It runs as follows:—"In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safe-guarding of the legitimate interests of minorities. Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare."

The effect of these two sections (Ss. 91 and 92) is to repeal the Scheduled District Acts, 1874 for the future. (See Adaptation of Laws Order in Council, 1936).

CHAPTER VI.

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

93. (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

Power of Governor to issue Proclamations.

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this subsection shall authorize the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date

on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

NOTES.

See Notes to S. 45, *supra*.

S. 93: Assume to himself all or any of the Powers.—"In the event of a breakdown of the constitutional machinery, the Governor is not bound to take over the whole Government of the Province and administer it himself on his own undivided responsibility. The intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him; we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely of lesser conflicts or disputes between it and the Governor." (J.P.C. Report para. 109).

Exhaustion of the Power.—There is a slight difference in the language of this section as compared with S. 45, which however would not seem to betoken any difference in the operation of the two sections. S. 45 states that on the expiry of the maximum period of 3 years under which the Government can be carried on under the section "the Government of the Federation shall be carried on in accordance with the other provisions of the Act", thereby clearly enacting that the section is exhausted after the 'continuous' use of this power for 3 years. These words are absent in S. 93, but having regard to the essential identity of the scheme of the two sections, the power must likewise be held to be exhausted by the Government of the Province being carried on for a period of 3 years under the section.

PART IV.

The Chief Commissioners' Provinces.

94 (1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.

(2) Aden shall cease to be part of India.

(3) A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

NOTES.

S. 94: Chief Commissioners' Provinces.—Except the areas known as Panth Piploda which has been raised to the status of a Chief Commissioner's Province by this Act, the other areas were Chief Commissioner's Provinces under S. 58 of the Government of India Act, 1919. They were thus under the administrative control of the Governor-General in Council. Coorg, Ajmer-Merwara, Andamans and Nicobars were scheduled Districts under the Scheduled Districts Act 1874 to which the Act was brought into force by notifications under S. 3 of the Act in the years 1875, 1877 and 1878 respectively; while British Baluchistan became a Scheduled District by virtue of a resolution of 1887 of the Secretary of State for India under 33 Viet., c. 3.

The Chief Commissioners' Provinces are "units" in the Federation, [S. 311 (2)], but the executive authority of the Federation extends to the administration of the Chief Commissioners' Provinces, and these areas are therefore under the direct administrative control of the Federal Government. Not being a reserved subject, the powers in this behalf are to be exercised by the Federal Ministers. The only exceptions are in the case of the two areas of British Baluchistan and the Andamans and Nicobars which are reserved to the Governor-General and are excepted from the competence of the Federal Ministers.

In respect of the areas other than these two, the Federal Legislature is competent without restriction to legislate on subjects comprised in all the legislative lists including the Provincial list. S. 100 (4).

A Chief Commissioner's Province might become a Governor's Province under the powers contained in S. 290.

British Baluchistan.—See Notes to S. 95.

Delhi.—Delhi was constituted a Chief Commissioner's Province in 1912 when the capital was transferred to that place with the object of providing the Government of India with a seat free from the influence of any provincial Government. Its budget like those of minor administrations like Coorg is a part of the Central budget. The area was within the legislative competence of the Indian Legislature and it was not a scheduled District. But by the Delhi Laws Act XIII of 1917 S. 7, the Governor-General was empowered to extend to it any Act in force in any other part of British India, which rendered it possible to maintain uniformity of laws with the Punjab of which it really forms a part. It is subject to the jurisdiction of the Lahore High Court. The city elected one member to the Legislative Assembly under the Government of India Act of 1919. Under this Act, it elects one member to the general seat in the Council of State and two members to the Federal Assembly, one general and one Muhammadan.

Ajmere-Merwara.—Ajmere-Merwara is an enclave in Native State territory and mainly on account of its isolation, which renders it difficult if not impossible to administer the area along with any other province, it has been administered as a Chief Commissioner's Province. Ever since 1871, it has been so administered, the agent for the Governor-General Rajputana States being *ex officio* the Chief Commissioner for the area. The Scheduled Districts Act, 1874 was extended to it in October, 1877, by notification under S. 3, and the Government of India Act, 1870, S. 1, has been applied to this territory. It elected one member to the Indian Legislative Assembly under the Government of India Act 1919. Under this Act it elects one person to each House of the Federal Legislature for the general seat.

Coorg.—See Notes to S. 97.

Andamans & Nicobar Islands.—See Notes to S. 96.

Panth Piploa.—The area known as the "Panth Piploa" is a very small tract of about 19 square miles in extent situated in Malwa in Central India. Up to now the Government of this area was carried on by the Political Agent at Malwa acting under the orders of the Agent to the Governor-General in Central India. Panth Piploa though British Territory is held by a Chief who is called "Pandit" belonging to the Dakshina Brahmin community. The grantees have no proprietary rights whatever, in the land, but receive a cash allowance through the political agent, who holds jurisdiction over these villages. The population of this area is about 4,000, and the total revenue derived from it about Rs. 15,000.

Sub-S. (2): Aden shall cease to be part of British India.—Aden has been a Chief Commissioner's Province since 1932. Describing the history of Aden and explaining the reasons for recommending the separation of Aden the Joint Parliamentary Committee said:

"The Settlement of Aden, which comprises the town of Aden itself and certain immediately adjacent districts, is at present administered by the Government of India as a Chief Commissioner's Province. Responsibility for the hinterland of Aden, which is commonly known as the Aden Protectorate and which is not British territory, has since 1917 rested with His Majesty's Government, who have also since the same date been responsible for the military and political affairs of the Settlement. Under arrangements reached in 1926, an annual contribution, subject to a maximum of

£150,000, but which amounts at the moment only to some £120,000, is made from Indian revenues to military and political expenditure on the Settlement and the Protectorate. The population of the Settlement is predominantly Arab, the Indian population, which is however of great commercial importance, numbering only about one seventh of the whole.

"Proposals for Indian constitutional reform inevitably necessitated consideration of the future position of Aden, and in particular of the question whether the Settlement could satisfactorily be included in the new arrangements, or whether it would not be preferable to transfer responsibility for its civil administration to His Majesty's Government, in whom military and political responsibility for the Settlement and complete responsibility for the affairs of the hinterland already vest. We have received strong representations against any alteration in the status of Aden from important and influential Indian interests. On the other hand we have received representations in favour of transfer from the Arab population, who appear to view with some apprehension the possibility that Aden may permanently remain a part of British India.

"We recognise the natural reluctance of Indian opinion to sever a connection of almost a century's standing with an area, the development of which is largely due to Indian enterprise and where much Indian capital is engaged. But great importance must also be attached to the interests and the feelings of the Arab majority of the population of the Settlement. We are impressed, apart from this, by the geographical remoteness of Aden from India; by the difficulties of merging it satisfactorily in a new Indian Federation; by the impracticability of a complete divorce between the Civil Administration of the Settlement on the one hand and political and military control of the Settlement and protectorate on the other; and by the anomaly of including in such new constitutional arrangements as may be approved for India an area predominantly Arab in population, already to some extent under Imperial control, and in practice inseparable from the Aden protectorate for which India has ceased to be in any way responsible. The constitutionally anomalous position which would arise in regard to defence, if the present arrangements were allowed to continue under the new Constitution, would be particularly marked. We appreciate, moreover, the force in the argument that it is desirable on general grounds, given the importance of Aden from a strategic standpoint to the Empire in the East as a whole, and not merely to any individual unit, that its control should vest in the Home Government. After full consideration we are of opinion that the Administration of the Settlement of Aden should be transferred from the Government of India to His Majesty's Government not later than the date of the establishment of the Federation. In reaching this conclusion we have not ignored the apprehension expressed by Indian interests connected with Aden as to the possible prejudicial effect of a transfer upon their position. We have, however, ascertained that His Majesty's Government are prepared in the event of transfer not merely to relieve India of her annual financial contribution, but to preserve a right of appeal in judicial cases to the Bombay High Court; to maintain (in the absence of any radical change in present economic circumstances) the existing policy of making Aden a free port; to do their utmost to keep the administration at its present standard; and to impose no additional taxation unless in their opinion such a course is absolutely necessary. They are further prepared to agree that a proportion of Indian service personnel shall be retained for some years after the date of the transfer that no racial discrimination shall be permitted; and that British-India subjects shall be allowed to enter the protectorate under precisely the same conditions as any other British subject. These assurances ought, in our view, adequately to meet the apprehensions to which we have referred above." [J. P. C. Report, paras. 160-162.] Cf., Provision in S. 288 (3) & (4).

95. (1) In directing and controlling 1[* * *] British Baluchistan. the administration of British Baluchistan, the Governor-General shall act in his discretion.

(2) The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioners' Provinces, but,

¹ Omitted by the Reprinting Act, 1935.

notwithstanding anything in this Act, no Act of the Federal Legislature shall apply to British Baluchistan unless the Governor-General in his discretion by public notification so directs, and the Governor-General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(3) The Governor-General may in his discretion make regulations for the peace and good government of British Baluchistan, and any regulations so made may repeal or amend any Act of the Federal Legislature or any existing Indian law which is for the time being applicable to the Province and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province.

The provisions of Part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Federal Legislature assented to by the Governor-General.

NOTES.

S. 95: British Baluchistan.—British Baluchistan was first placed under a Chief Commissioner in 1887 who was entrusted with the control of the Sibi and Pishin areas which had been ceded by Yakub Khan in 1879, and which were then declared to be British areas. The tract under the Chief Commissioner includes the areas known as Sharard Kach, Kaway, Harnar and Thal Chotali, besides the two areas above mentioned. (Resolution of the Secretary of State for India under 33 Vict. c. 3, S. 1 dated 1st November, 1887). It was therefore a Scheduled District under the Scheduled Districts Act 1874. The rest of the area of Baluchistan consists of "Agency tracts" which are administered by the Chief Commissioner of Baluchistan as agent to the Governor-General under the Foreign Jurisdiction Order in Council 1902. These agency areas now fall within the category of tribal areas. [S. 311 (1)] which are excluded from the competence of the Federal Legislature.

The interlocking of the tribal areas with British territory in this area and the system of jirgas which prevail herein, together with the close and intimate connection of this area with the problem of Indian defence, have led to these areas being withdrawn from the competence of the Federal Ministry.

Sub-S. 3.—This is merely a reproduction of the existing power under S. 71 of the Government of India Act, 1919.

British Baluchistan is represented in the Federal Legislature by two Muhammadan members—one in the Council of State and one in the Federal Assembly. The manner in which these members are to be chosen is left to be prescribed later. (*Sch. I Part I, para. 7 and 24 (b)*).

96. The provisions of subsection (3) of the last preceding section shall apply in relation to the Andaman and Nicobar Islands as they apply in relation to British Baluchistan.

The Andaman and Nicobar Islands.

NOTES.

S. 96: Andamans & Nicobars.—The penal settlement of India was located at Port Blair in this group of Islands in the Bay of Bengal. In 1921 on the recommendation of a Committee appointed by the Government of India, the penal settlement was abolished, but it has been recently revived to make provision for certain terrorist prisoners whose incarceration in India was not deemed safe.

It has been a Chief Commissioner's Province since 1872 and the Scheduled Districts Act 1874 was extended to it by notification under S. 3 in 1878. The Government of India Act 1870, S. 1, has been applied to this area. The islands are mostly inhabited by aboriginal tribes, which justifies the provision made for their administration.

97. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Coorg. Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged.

NOTES.

S. 97: Coorg.—Coorg was annexed to and became British territory in 1834. The area was administered as a Scheduled District by notification under the Scheduled Districts Act 1874, and the legislation for the area was provided by the application to it of the Government of India Act 1870, (33 Vict., c., 3), i.e., by regulations under the powers corresponding to S. 71, of the Government of India Act 1915. Courts have been established under Regulation II, of 1881 passed by the Governor-General in pursuance of his legislative power under 33 Vict., c., 3.

When the reforms of 1919 were introduced into British India, Coorg was offered the alternative of amalgamation with the Province of Madras, or of having a Legislative Council of its own with restricted powers, and a representative meeting of the people chose the latter. Rules were accordingly made separating provincial from central subjects nearly on the lines of the Governor's provinces. By a notification of October, 1923, a Legislative Council was constituted consisting of 20 members 15 of them elected on a fairly popular franchise and 5 nominated members. The powers of the Council are restricted and resemble those of the Councils under the Statutes of 1892 and 1909. Resolutions on the Budget are merely recommendatory, and the Council has deliberative and interrogatory powers. Its legislative powers are restricted and bills have to receive the previous sanction of the Governor-General. Since the constitution of the Council, the Governor-General's powers under S. 71, and the power of the Chief Commissioner under the Scheduled Districts Act, 1874, have not been exercised, though these Statutes are still technically in force in the area. The Resident of Mysore is *ex officio* the Chief Commissioner for Coorg.

Coorg has now been allotted representation in the Federal Legislature, one member for the general seat for the Federal Assembly elected by the members of the Legislative Council [Sch. I Part I, para. 24 (a)] and one for the general seat for the Council of State by territorial constituencies to be formed hereafter Sch. I, Part I, para. 5.

98. The provisions of Part III of this Act with respect to police rules and with respect to crimes of violence intended to overthrow the Government, including the provisions thereof relating to the non-disclosure of certain records and information, shall apply in relation to Chief Commissioners' Provinces as they apply in relation to Governors' Provinces, with the substitution for references to the Governor and the Chamber or Chambers of the Provincial Legislature of references to the Governor-General and the Chambers of the Federal Legislature.

NOTES

S. 98.—See Notes to Ss. 56 to 58.

PART V.

Legislative Powers.

CHAPTER I.

DISTRIBUTION OF POWERS.

99. (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

Extent of Federal and Provincial laws.

(2) Without prejudice to the generality of the powers conferred, by the preceding sub-section, no Federal law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

NOTES.

S. 99: Scope.—This section defines the territorial ambit of the powers conferred on the Federal and the Provincial Legislatures as also the classes of persons over whom they have legislative competence. The succeeding sections of this Chapter together with the legislative lists in Schedule VII, delimit their competence with reference to the subject matter of the legislation.

Sub S. (1): Territorial Limitation.—Primarily, the legislative power conferred on the Federal legislature is territorially confined to British India and the Federating States, while that of the Provincial Legislatures is confined to the respective provinces. Even within the territory of a province, however, the Acts of the Provincial Legislatures do not extend of their own force to the excluded and partially excluded areas, and that exception is saved from the generality of the powers conferred by this section by the opening words. British India is defined in S. 311 (1) to mean "All territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces". It does not therefore include (1) the tribal areas to the administration of which the executive authority of the Federation extends. Cf., S. 8 (1) (c). (2) Areas in which powers under the Foreign Jurisdiction Act, are exercised.

Plenary Powers of Legislation.—But when acting within the territorial limits, the powers of the Legislatures Federal and Provincial in respect of the matters enumerated in the lists are as supreme and plenary as those of Parliament itself. As Lord Macmillan delivering the judgment of the Judicial Committee in *Croft v. Dunphy*, (1933 A.C. 156) said: "Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully Sovereign State. In the well known case of the *Queen v. Burah*, (3 A.C. 889) Lord Selbourne in expressing the views of the Board in the comparable instance of India used at page 904 this very significant language: "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it and it can of course do nothing beyond the limits which circumscribe these powers. But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament but has and was intended to have plenary powers of legislation as large and of the same nature as those of Parliament itself."

"Again, speaking of the Provincial Legislature of Ontario, Sir B. Peacock, in giving the judgment of this Board in *Hodge v. The Queen*, (9 A.C. 117) said at p. 132. "When the British North America Act enacted that there should be a legislature for Ontario and that its Legislative Assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in S. 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary

and as ample within the limits prescribed by S. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow."

Territorial Waters.—The definition of British India and the provinces would extend seaward up to the limit of 'territorial waters'. The expression 'territorial waters' is used in the Act, (Item 23 of List 1 Sch. VII) but it has not been defined. The Territorial Waters Act 1878, described it as one marine league from the coast, and that was the limit mentioned by Lord Shaw as the limit of the Crown's territory in *Chelikani Rama Rao v. Secretary of State*, 39 M. 617. But the Privy Council refused to define the limits and decide the question as to whether a State had proprietary right in the soil under territorial waters in *A. G. for British Columbia v. A. G. for Canada*, 1914 A.C. 153. Whatever doubts there might be as regards the proprietary rights of a State in the territorial waters around its coasts, there exists none in regard to its *plenum dominium* over the area to enable it to regulate fishing, enforce police laws, and otherwise extend its legislation to it.

Incidental Powers—Extension by.—"When a power is conferred to legislate on a particular topic, it is important in determining the scope of the power to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power" (Per Lord Macmillan in *Croft v. Dunphy*). Thus when the British North America Act conferred power on the Dominion Government to deal with immigration and aliens, it was held to authorise them to impose such extra territorial constraint as was necessary to execute the power. Every State has a right to expel aliens and for that right to be effective extra territorial constraint is essential and so must be deemed to be conferred. *A. G. for Canada v. Cain*, 1906 A. C. 542. Similarly a power to legislate in regard to customs includes the power to enact provisions authorising seizure of ships having dutiable goods on board when found hovering off the Coasts within distances substantially in excess of the ordinary territorial limits. On this reasoning the Privy Council sustained the validity of anti-smuggling legislation of Canada, which permitted seizure within 12 miles of the Coast. *Croft v. Dunphy*, 1933 A.C. 156.

Limits of Extra Territorial Legislation.—But apart from these rather exceptional cases it may be stated that as a general rule the powers of Colonial Legislatures being limited to the making of laws for the peace, order and good government of the respective Colonies, cannot be used so as to have extra-territorial effect.

"The true rule with respect to subordinate legislatures is that they will not be held to possess any extra territorial jurisdiction unless it is conferred on them expressly or by necessary implication." *Merchant Services v. Steamship Owners*, 16 Commonwealth Law Reports at p. 702. See *Macleod v. A. G. of New South Wales*, (1891) A. C. 455; *Low v. Routledge*, 1 Ch. App. at p. 442 "the laws of a Colony cannot extend beyond its territorial limits."

Some observations of Lord Macmillan in *Croft v. Dunphy*, seemed to raise a doubt as to whether there was any such limitation at all on the power of Colonies but the matter must be deemed to have been set at rest by the authoritative pronouncement of Lord Sankey in *British Coal Corporation v. King*, 1935 A.C. 500, affirming such a limitation.

The precise extent of the territorial limitation on the power of Colonial Parliaments, as Lord Sankey said in the *British Coal Corporation case*, is obscure, and gave rise to doubt and disputes. The matter was referred to the Operation of Dominion Laws Sub-Committee of the Imperial Conference, 1926. In their report they stated: "In the case of all legislatures territorial limitations upon the operation of legislation are familiar in practice. They arise from the express terms of Statutes or from rules of construction applied by the Courts as to the presumed intention of the legislature, regard being had to the comity of nations and other considerations. But in the case of the legislation of Dominion Parliaments there is also an indefinite range in which the limitations may exist not merely as rules of interpretation but as constitutional limitations."

"The subject is full of obscurity and there is conflict in legal opinion as expressed in the Courts and in the writings of jurists both as to the existence of the limitation itself and as to its extent. The doctrine of limitation is the subject of no certain test applicable to all cases and constitutional power over the same matter

may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. It introduces a general uncertainty which can be illustrated by question raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration".

In order to remove these doubts and difficulties, the Statute of Westminster, 1931, S. 3 enacted: "It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra territorial operation." The construction and effect of this section raises problems whose discussion would have little bearing on the powers of the Indian Legislature and would take us far afield.

The question as to the retrospective operation of the section was mooted before the Privy Council in *British Coal Corporation v. King*, 1935 A.C. 500, but their Lordships did not decide the point. The one further point to be noticed is that it does not confer extra-territorial legislative powers on the State and Provincial Legislatures, but leaves them in the old position.

Express Powers of Extra territorial Legislation.—Sub-S. (2) confers certain extra territorial powers of legislation on the Federal Legislature. In so far as definite powers are conferred, the powers of the Federal Legislature are removed from the conflicts and doubts which attended the powers of Colonial Legislatures before the Statute of Westminster. The powers thus conferred by Sub-S. (2) are in addition to and not in derogation of, the powers conferred by Sub-S. (1). This is confirmed by the use of the expression "without prejudice to the generality of the powers conferred by the preceding sub-section" with which the sub-section opens. Possibly, in the absence of these words, conformably to the maxim *expressio unius est exclusio alterius*, it would have been open to doubt whether the power to legislate outside British India was confined to the cases mentioned in the sub-section, and whether the legislation the validity of which was upheld in *A. G. for Canada v. Cain*, or in *Croft v. Dunphy*, would be within the powers of the Federal Legislature.

It will be noticed that extra territorial powers of legislation are conferred on the Federal Legislature only and not on Provincial Legislatures, a feature which reproduces the provision of S. 3, of the Statute of Westminster.

Sub-Cls. (a) (b) & (c).—These reproduce merely the provisions of S. 65 (1) of the Government of India Act, 1915, which consolidated the earlier enactments on the subject. As to sub-Cl. (c) see Notes to S. 105, *infra*. See for a history of these powers Illert's Government of India p. 228 *et seq.*

Sub-Cl. (d).—It applies the principle of sub-clause (b) to the situation created by the entry of the Indian States into the structure of Indian polity.

Sub-Cl. (c).—This is new.

In the absence of a similar provision the question of the scope of the legislation by the Parliament of Commonwealth of Australia, arose in *Australian Merchant Service Guild of Australia v. Currie & Co.*, (5 Commonwealth Law Reports 737) in this form. Section V of the covering clauses of the Commonwealth of Australia Act provides, "The Laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in "the Commonwealth".

The point that arose for consideration was whether the Commonwealth Court of Arbitration and Conciliation, established by Commonwealth legislation had jurisdiction to settle a dispute in respect of ships registered at Melbourne and engaged in trade between Australia, Calcutta and South Africa. The officers and directors of the company owning the ships resided in Australia but the ships' articles were signed at Calcutta, to obtain the benefit of the Merchant Shipping Act. The organisation of employees filed a claim for the settlement of a dispute between the officers and their employees as to wages, hours of work and conditions of labour, etc., in the Commonwealth Court of Conciliation and Arbitration. It was conceded that the Commonwealth Legislature not being sovereign could not pass extra territorial legislation unless such power was conferred expressly or by necessary implication. It was therefore argued that the port of clearance meant the port of original clearance, which the ship left on registration. The High Court of Australia rejected this contention. Griffith, C.J., said: "The jurisdiction of the Commonwealth Courts and the operation of the Commonwealth laws extend only to places within the Commonwealth except

so far as a larger jurisdiction or operation is given to them by law". And O'Connor J., said: "The jurisdiction of the Court, must of course be confined within the territorial limits over which the law of the Commonwealth extend and it is conceded that apart from Cl. V of the covering clause those laws can have no operation beyond the 3 miles limit around Commonwealth territory. On a voyage, coming within the meaning of the section, the Australian ship should for the purpose of the Commonwealth Laws be deemed a floating portion of Commonwealth territory".

The High Court therefore came to the conclusion that the Court of Conciliation had no jurisdiction.

Sub-S. (c) herein confers powers on the Federal Legislature to enact legislation held to be beyond the powers of the Commonwealth Parliament.

Extra-territorial Taxation.—Though the Colonial Legislatures may affect any property within the Colony wherever the owner may be, this power of taxation does not extend to the case of a non-resident foreigner in respect of property which in the contemplation of law is not locally situated. In the case of immovable property the question as to their situs does not give rise to complications, but the situs of debts is a subject shrouded in obscurity. As regards shares the Privy Council has held in *Brassard v. Smith*, (1925 A.C. 371) that the place where the shares are registered, is decisive of its situation and the legislation of Quebec purporting to tax shares of the Royal Bank of Canada, (whose head office was in Quebec) registered at Halifax was held to be invalid. In *London & South E. Investment Trust Ltd. v. British Tobacco Co. Ltd.*, (1927) 1 Ch. 107, the plaintiff an English Trust Investment Company held shares in the defendant company, also an English registered company, deriving its revenues from its shares in companies carrying on business in Australia. The defendant company was assessed to Australian Income-Tax and was directed to deduct an amount sufficient to pay the income-tax from the dividend payable to the English Trust Company. The defendant company paid the tax and deducted the amount from the dividend due to the plaintiff company. The plaintiff company then sued the defendant company for the amount deducted. Tomlin, J., in upholding the plaintiff's claim stated: "It may safely be said that the powers of taxation conferred upon the Commonwealth Legislature do not extend to authorise the imposition of taxation upon a person who is not resident or domiciled within the Commonwealth in respect of property which is not situate within the Commonwealth." "The defendant company is an English company, with a registered office in England and it is upon the English register alone that the shares of the plaintiff company in the defendant company can be transferred." He therefore came to the conclusion that the shares were situate in England. So the debt to which the declaration of dividend upon the shares gave rise was also situate in England, hence, it was not property in respect of which the Commonwealth Legislature had power to impose taxation. See further, as to the situs of assets and debts, *Beaver v. Master in Equity*, Victoria, 1895 A.C. 251; *Hardinge v. Queensland*, (1898) A.C. 769; *Stamp Duties v. Salting*, (1907) A.C. 449.

The powers of the Indian Federal Legislature would seem to be similarly circumscribed.

Even with regard to assets in India, a limitation is imposed on the power of the Federal and Provincial Legislatures to tax interest payable on sterling securities in England. S. 178 (3) *infra*.

Extra-territorial Fishery Legislation.—The Federal Legislature is conferred by Item 23 of the Federal List power to legislate in regard to "fishing and fisheries beyond territorial waters", adopting the language of the Australian Commonwealth Act "fishing and fisheries beyond Australian Waters". Does this connote a more extended power than is comprehended within sub-S. (2) of this Section? Would it be within the competence of the Legislature to enact, *e.g.*, fishery regulations applicable to foreigners in foreign ships beyond territorial waters or is the generality of the power in Item 23 to be read as confined to the express extensions enacted here in sub-S. (2). It is submitted though not without hesitation, that the function of the Legislative Lists is the distribution of the totality of Legislative power between the Federal and Provincial Legislatures and that the extensions or restrictions attaching to the total power under the Act govern the powers in the Lists. The power in regard to fisheries is distributed between the Provinces and the Federation by their location, and in regard

to fisheries beyond territorial waters the powers of the Legislature are confined to the persons and ships over whom it has an extended legislative authority under sub-S. (2).

Conformity to International Law suggested as limitation on the power.—The following statement of Lord Macmillan in *Croft v. Dunphy*, (1933) A.C. 156 raises for consideration the question as to whether any limitation is imposed by the principles of International Law on the power of non-Sovereign legislative bodies. "It may be that legislation of the Dominion Parliament may be challenged as *ultra vires* on the ground that it is contrary to the principles of International Law but that must be because it must be assumed that the British North America Act has not conferred power on the Dominion Parliament to legislate contrary to these principles." This is merely an *obiter dictum* of his Lordship, as he came to the conclusion that the legislation in question was warranted by International Law. The powers of the English Parliament are subject to no such limitation. See *Croft v. Dunphy*, itself and *The Bathori*, (1934) A.C. 91 at 98; and it is doubtful how far such a limitation is consistent with the long course of decisions starting with *The Queen v. Burah*, (1878) 3 A.C. 889 in which the Privy Council repeatedly stressed the plenary powers of Colonial and Indian Legislatures in respect of subjects on which they are clothed with legislative powers.

Power to affect the Prerogative of the Crown.—One further point requires to be considered. It will be seen that S. 81 (1) (a) of the Government of India Act, 1919, which saved the validity of Indian Legislation affecting the prerogative of the Crown is not repeated in this Act. The correct view would seem to be that the omission is not material and does not make any change in the law as the saving was merely *ex abundanti cautela*.

It is true that the "principle is clearly established that the King's prerogative cannot be restricted or qualified save by express words or by necessary intendment, and in connection with Dominions or Colonial matters, that principle involves that if the limitation of the prerogative is by a Dominion or Colonial Act, not only must that Act itself deal with the prerogative either by express terms or by necessary intendment, but it must be the Act of a Dominion or Colonial Legislature which has been endowed with the requisite power by an Imperial Act likewise giving the power either by express terms or by necessary intendment." *Per* Lord Sankey in *British Coal Corporation v. The King*, (1935) A.C. 500.

Sir Bashyam Iyengar, J., inferred the conferment of the power to affect the prerogative by implication from the grant of the power on the provincial legislature to legislate for "peace, order and good government" for the Province. See *Bell v. Municipal Commissioners for the City of Madras*, 25 M. 457. The Bombay High Court however dissented from that view and was of the opinion that a power to affect the prerogative could not be implied in such circumstances and that the Provincial Legislatures in India did not have the power prior to the Government of India Amending Act, 1916. See *Secretary of State v. Bombay Municipality*, 59 Bom. 681=37 Bom. L.R. 499.

The view of Sir Bashyam Iyengar must now be taken to be correct in view of the observations of Lord Sankey in *The British Coal Corporation case*, already cited, where he observed: "Their Lordships are of the opinion that the Act (British North America Act) does invest the Dominion Parliament with these powers. It does not indeed do so by express terms but it does so by necessary intendment. S. 91 of the Act, read along with the rest of the Act is according to its true construction intended to make and is apt to make the Dominions Legislature supreme and endow it with the same authority as the Imperial Parliament within the assigned limits of subjects and area. Just as it was said in *Hodge v. The Queen*, 9 A.C. 177 that S. 92 of the Act had that effect in regard to the Provincial legislatures"—a striking confirmation of the reasoning in *Bell's case*, (25 M. 457).

It certainly could not have been the intention of Parliament to cut down powers which had been expressly granted to the Indian Legislature in 1853 and had been enjoyed since then. It is true that the expression "peace, order and good government" which occur in the Canadian Act, and which occurred in relation to the local legislatures under S. 80-A of the Government of India Act, 1919 do not occur in S. 99; but it is submitted that nothing turns on the presence or absence of those words. S. 99

confers power on the Federal Legislature to legislate for the whole of British India, and on the Provinces for the territories included therein and the only limitations on the plenitude of their powers are those contained in the Act itself—which are imported into the section by the expression “subject to the provisions of the Act”. Indeed, Lord Sankey does not quote those words in support of the implication of power, but relies merely on the particular subject of legislation being included within the sphere of the particular legislature. Further, in saving certain particulars from the purview of the Legislatures in S. 110 of the present Act, it is only the right to affect the prerogative of the grant of special leave by the Privy Council that is denied; thus irresistibly pointing to the conclusion that it is within the competence of the Legislature to affect other prerogatives, except as specially provided for.

Commencement of this part.—The whole of this chapter, including the scheme of the distribution of powers between the centre and the Provinces, comes into force with the commencement of Provincial Autonomy, in other words with the coming into operation of Part III of the Act. *See* the Government of India (Commencement and Transitory Provisions) Order 1936 under which Part III comes into effect from 1st April, 1937. Until the commencement of Part II and the establishment of the Federation, the powers conferred on the Federal Legislature are to be exercised by the Central Legislature. S. 316.

100. (1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the “Federal Legislative List”)

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the “Concurrent Legislative List”).

(3) Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the “Provincial Legislative List”).

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

NOTES.

S. 100: Distribution of Power in unitary Constitution.—So long as the Government of India was unitary the distribution of legislative powers as between the provinces and the centre was necessitated more with a view to administrative convenience than to determine areas of legislative competence. That explains how it was possible to devise a system and employ a machinery which permitted on the one hand wide powers of legislation to the Provinces, while reserving a right to the centre to legislate on all subjects for all the provinces, without stamping any legislation on a provincial or central subject by any legislature as invalid or *ultra vires*. By a schedule to Rule 3 of the Devolution Rules framed under S. 45-A of the Government of India Act, 1919, subjects were in relation to the functions of Government divided as Central and Provincial. Any matter not included in the Provincial list was a central subject, thus adopting the Canadian model under which the residuary powers are reserved to the centre. If any doubt arose as to the list under which any particular subject fell, the matter was decided by the Governor-General in Council, without there being any appeal to the Courts. If a provincial legislature desired to legislate in regard to any central subject, the previous sanction of the Governor-General had to be obtained before the legislation could be initiated, but the want of sanction did not invalidate the legislation and the assent of the Governor-General cured the previous irregularity. (80-A (3)). Similarly the previous consent of the Governor-General was needed before the Central

Legislature could trench on the Provincial field; this was also subject to a similar curative provision. (S. 87 (2) (i) and (ii) and S. 84 (2)).

In a Federation.—But with the advent of Federation, and with the rise in the status of British Indian Provinces into 'units' of the Federation a legal necessity for the demarcation of the fields of the units and the Federation arose. For 'Federalism is the triumph of legalism' and Federalism necessarily involves distribution of legislative powers. The maintenance of the line which divides the bounds of the legislative power of the centre and the units constitutes the essence of modern federalism. The final voice in the determination of the fields of legislative powers could no longer be left to the Governor General, but had to be brought into the area of judicial decision.

"We do not disguise the fact" say the Joint Parliamentary Committee, "that these proposals will open the door to litigation of a kind which has hitherto been almost unknown in India. . . . but a Statutory allocation of exclusive jurisdictions to the centre and the provinces respectively is the only possible foundation for Provincial Autonomy. We are fully sensible of the immense practical advantages of the present system and of the uncertainties of litigation which have followed elsewhere from a Statutory delimitation of competing jurisdictions; but we are satisfied that a relationship between centre and Provinces, in which each depends in the last resort for the scope of its legislative jurisdiction on the decision of the Central Executive, as represented by the Governor-General would form no tolerable basis for an enduring Constitution and would be inconsistent with the whole conception of autonomous Provinces." (*Para. 230 J.P.C. Report.*)

The Legislative Lists—Sch VII.—In framing these legislative lists there were two main models obtaining in the British Dominions—the Canadian and the Australian. The Federation of Canada formed just after the experiences of the American Civil War, represented a reaction against the excessive State-feeling engendered by the American Constitution. The exclusive powers of the Dominion and the Provinces are separately dealt with in Ss. 91 and 92 respectively and powers not expressly conferred on the States were reserved to the Centre—or the Dominion. Two subjects—agriculture and immigration were however placed within the concurrent power of both the Provincial and the Dominion Legislatures, with a proviso however that in case of conflict or repugnancy between Dominion and Provincial Legislation, the former shall prevail.

In the case of Australia however, historical reasons tended to influence the distribution of powers in the contrary direction. The Australian States were full fledged Colonies in enjoyment of responsible Government and with plenary powers of legislation and the comparative freedom from foreign aggression flowing from their geographic location removed one of the strongest of motives for a federation. The absence however of a common economic and fiscal policy gave rise to inconvenience and was the chief factor that promoted the union. The principles of the distribution of powers in a Federation were examined afresh, and the conclusion was reached that provided sufficient powers were conferred on the centre, there was no danger of a Federation breaking up merely because the States enjoyed a large degree of immunity. There was therefore an attempt made to reproduce the American model with the variations requisite to suit it to the needs of Australia.

The main enumeration in the Australian Commonwealth is of the concurrent powers—S. 51, which the Commonwealth enjoys in common with the States; and S. 109 provides that 'when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall to the extent of the inconsistency be invalid'. There are however a few matters—specified in S. 52 in which the Commonwealth Parliament has an exclusive power. All other powers and subjects are left to be enjoyed by the States exclusively.

The method of distribution of powers adopted in this Act is neither the Canadian, nor the Australian but is a mixture of the two. It follows the Canadian example in that the powers of both the centre as well as of the units of the Federation are enumerated, but it differs from it in failing to vest the residue in the Dominion and in having a long concurrent list. It follows the Australian in enumerating the concurrent powers and generally in providing for the method of resolving repugnancy in the concurrent field; but differs from it again in not leaving the unenumerated powers to the

States. It differs from both however in that it exhaustively enumerates all the subjects of legislation and leaves practically no residue.

Indian States in the Federation.—But the state of affairs hitherto discussed are true in relation to British India alone. The powers of the Federal Legislature are restricted in each State to the matters as to which that particular State in and by its Instrument of Accession concedes the right to legislate and to the extent of such concession the power of the Federal Legislature is exclusive, but beyond it all the rights inhere in the States themselves. This of course produces an anomaly but having regard to the facts of the situation and antecedent history, things could not perhaps have been otherwise.

Predominance of the Federal Legislative List.—Sub-S. (1) deals with the Federal list; and confers on the Federal Legislature exclusive power to legislate with respect to the matters mentioned in that list—notwithstanding any powers conferred on Provincial Legislatures by the concurrent and provincial lists. Sub-S. (2) confers powers on the Federal Legislature in respect of matters in the concurrent list subject to the exclusive powers conferred on it by the Federal List and notwithstanding the powers of the Provincial Legislatures with respect to the Provincial list. The method of resolving conflicts between Federal and Provincial Legislation in the concurrent field is laid down by S. 107. The powers conferred on the Provincial Legislatures to legislate with respect to matters in the Provincial List dealt with by Sub-S. (3) is subject to the provisions conferring legislative powers on the Federal Legislature by the two previous sub-sections. The effect of the section therefore is that in case of conflict between entries in Lists I and II the former prevails so far as the Federal Legislature is concerned thus following in some measure the principle of S. 91 of the British North America Act. This is achieved by the use in Sub-S. (1) of the expression “notwithstanding anything in the two succeeding sub-sections” and of the expression “subject to the two preceding sub-sections” in Sub-S. (3).

The position may be summarised thus:

1. If there is overlapping between a matter falling within the Federal List and the Provincial List the subject to the extent of the overlapping is one exclusively Federal on which the Province cannot legislate.

2. If there is any overlapping between the Federal List and the concurrent List it is again similarly treated as being exclusively Federal, so as to shut out Provincial Legislation on the subject.

3. If there is overlapping between a matter falling within List III and List II the subject is treated as within the concurrent list thus giving the Federal Legislature power to legislate over the matter with the attendant consequences. In other words it is only what is not comprehended within the enumerated subjects in Lists I and II that is assigned exclusively to the provinces.

The proper rule of construction would therefore be first to examine the lists, without a presumption in favour of any list, to see whether the matter in question falls within the enumerated powers of either Legislature. The lists must be read together and the language of the one interpreted in the light of the other. (*Citizens Insurance Co. of Canada v. Parsons*, 7 A.C. 109). If after this process of examination, an overlapping is found between the 1st and 2nd Lists, or between the 1st and the 3rd lists, the overlapping matter must be held to be within the exclusive Federal field into which the Provincial Legislature cannot intrude. Such a case is not merely a predominance of Federal over Provincial Legislation, posing the actual existence of Federal Legislation on the subject, but an entire exclusion of Provincial legislative competence. In other words, in such a case Provincial Legislation on such subject-matter constitutes not a repugnance to Federal Law, but a repugnance to the Constitution itself.

A distinction must however be drawn between direct overlapping of enumerated subjects, and a case where incidental or ancillary provisions in a Federal Legislation on a subject within the exclusive Federal field entrenches on a Provincial enumerated subject. In the latter case the Federal Legislation would have predominance, in the event of repugnance to any provincial enactment. It is to this field of ancillary or incidental legislation that the rule enunciated by Lord Watson in *The Manitoba School Case*, (1895 A.C. 202), reiterated by Lord Tomlin in *A.G. for Canada v. A.G. for British Columbia*, (1930 A.C. 111), “There can be a domain in which Provincial

and Dominion Legislation may overlap, in which case neither legislation will be *ultra vires* if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail," would apply. *See also per Lord Dunedin in Grand Trunk Ry., Co. v. A-G. for Canada*, 1907 A.C. 65.

This tends in some measure to mitigate the uncertainties arising from the inevitable risks of overlapping between the entries in the lists and imparts to the constitution a degree of centralisation which may be expected to counteract the play of centrifugal forces generated by Provincial Autonomy.

The principle laid down by the Privy Council in *Tennant v. Union Bank of Canada*, (1894) A.C. 31 on the construction of the British North America Act, that the legislation of the Dominion, so long as it strictly relates to the subjects of legislation expressly enumerated is of paramount authority even though it trenches upon matters assigned to the Provincial list, would seem to be correct in relation to the distribution of powers under this Act also.

Applicability of the Doctrine of Immunity of Instrumentalities.—The next question for consideration is whether the Federal Structure of the Constitution imposes by itself a limitation on the powers of the Centre and the Units, in other words whether the rule of implied prohibition, designated in American Constitutional Law as the doctrine of the "immunity of instrumentalities," has any application to the powers conferred on the Federal and Provincial Legislatures by this Act. It is submitted that in this Constitution with its exhaustive enumeration and the elaborate scheme of distribution of powers, there is no scope for the application of any such doctrine. The provisions of S. 126 (1) and (3) for so working the executive power vested in the federation and in the Provinces as not to impede or restrict the powers of the other are not to be curial analogically to the field of Legislative competence. The words of Lord Hothouse in rejecting the application of the American Doctrine to the construction of the powers conferred on the Dominion and Provincial Legislatures by the British North America Act (*Bank of Toronto v. Lambe*, 12 A.C. 575) appear to be apt and applicable to the construction of this Act. "But Their Lordships cannot conceive that when the Imperial Parliament conferred wide powers of Local Self-Government on great countries, it intended to limit them on the speculation that they would be used in an injurious manner. Whatever powers fall within the enumerated subjects is in their Lordships judgment what the Imperial Parliament intended to give; and to place a limit on it because the power may be used unwisely, as all powers may, would be an error and would lead to insuperable difficulties, in the construction of the Federation Act" at p. 586. Cf. *Webb v. Outrim*, 1907 A.C. 81, where the Privy Council rejected the doctrine as inapplicable to the construction of the Australian Commonwealth Act. (See further Notes to Ss. 154 and 155 *infra*.)

But one does not feel on sure ground in hazarding a similar view in the case of the Indian States *vis à vis* the Federation. The theory of the "Federal compact" which is the foundation of the American doctrine, seems to be satisfied in their case by the "Instruments of Accession" executed by the ruler and accepted by His Majesty, being the source of Federal authority. But having regard to the range of subjects over which jurisdiction to legislate is ceded to the Federation, and the arrangements set out in Part VI for the administration of Federal Law in the Indian States, the scope for the application of the doctrine must be very limited.

Closely connected with this topic of 'implied prohibitions', is the theory advanced in support of it that the Crown is in relation to a Federation to be regarded not as one but as several juristic persons; and that the King "in right of a given locality" cannot be bound by legislation in another locality. The rule that the Crown is not bound by a Statute unless named is a rule of construction and not of law and though there has been a singular lack of uniformity in Indian Legislation on this point (See *Bell v. The Municipal Commissioners for the City of Madras*, 25 Mad. 457), it may be broadly stated that the rule of construction is applicable in India as elsewhere. But when as a result of express enactment or by necessary implication the conclusion is reached that the Crown is bound, it is not only the Crown "in right of the locality" but the Crown everywhere "in right of the Province" and "in right of the Federation" that is bound by the enactment. The primary legal principle that the Crown is ubiquitous and indivisible in the King's dominions—must be taken as settled since the decision of the Judicial Committee in *Williams v. Howarth*, (1905) A.C. 551. (See further Notes to S. 176).

Rule as to ultra vires.—As the lists distribute legislative powers defining and delimiting the competence of the legislatures by reference to subjects, an enactment regulating a matter included in the exclusively Provincial List will be valid only if it is passed by a Provincial Legislature, and an enactment regulating a matter in the Federal list will be valid only if it is passed by the Federal Legislature; and to the extent to which either Legislature invades the province of the other its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the legislature has transgressed the boundaries set out by the exclusive list Federal or Provincial as the case may be. In the words of Day, J., delivering the Judgment of the Supreme Court of the U. S. in *Hammer v. Dagenhart*, 247 U.S. 251. "This Court has no more important function than that which devolves upon it, the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, Federal and State, to the end that each may continue to discharge harmoniously with the other, the duties entrusted to it by the constitution. The law which prescribes the bounds of legislative power imposes upon the Courts the duty of seeing that these bounds are not overstepped."

The questions which may arise as to the validity of legislation in the concurrent field are more complicated, and are dealt with by S. 107, but here also the disputes as to the validity of Legislation will in the last resort have to be decided by the Courts.

There is a presumption in favour of the legality of a statute and the Courts will not declare an act unconstitutional or *ultra vires* unless the repugnancy to the Constitution is clear and beyond doubt. *Cooley Constitutional Limitations* p. 217. *U. S. v. Harris*, 106 U.S. 639. If the language of the enactment is ambiguous, and on one construction would be within the powers of the legislature, Courts will construe ambiguous expression in such manner as to maintain the validity of the Statute, if the language will reasonably bear such interpretation. This is merely an application of the maxim *ut res magis valeat quam pereat*. Cf. *Macleod v. A.G. for New South Wales*, (1891) A.C. 455.

Colourable Legislation.—But one legislative body cannot under colour or pretence of legislating on a subject within its jurisdiction, really legislate on a subject which is committed to the exclusive power of another legislative body. For the legislature cannot do indirectly what it cannot do directly. Cf., *A. G. for Quebec v. Queen Insurance Co.*, 3 A.C. 1090.

"It is not open to the Dominion Parliament to interfere with a class of subjects committed exclusively to the Provincial Legislatures and then to justify this by enacting ancillary provisions designated as new phases of Dominion Criminal Law which require a title to so interfere as the basis of their application". In accordance with this principle the Federation cannot by purporting to act in a field committed to it appropriate to itself exclusively a field of jurisdiction in which apart from such a procedure it could exert no legal authority. *Attorney-General for Ontario v. Reciprocal Insurers*, 1924 A.C. 328. If when examined as a whole, legislation in form within the Federal power is found in aspects and purposes within the Provincial sphere and to deal with matters committed to the Provinces, it cannot be upheld as valid. And indeed to hold otherwise would be incompatible with the essential principle of Provincial Autonomy and the Federation, the object of which was not to weld the Provinces into one, or to subordinate the Provincial Governments to Central authority. "Within the sphere allotted to them by the Act the Dominion and the Provinces are" as Lord Haldane said in *G. W. Saddlery v. The King*, (1921) 2 A.C. 91 "rendered in general principle, co-ordinate Governments."

The converse also would be true and a Provincial Legislature cannot in the guise of legislating on a Provincial subject intrude into the Federal Field. Cf., *John Deere Plow Company v. Wharton*, 1915 A.C. 330 (P.C.).

Test for determining scope of Legislation.—To determine the class into which an enactment falls, "it has been formally laid down that the Courts must ascertain the true nature and character of the enactment its 'pith and substance', and it is the result of this investigation, not the form alone which the Statute may have assumed under the hand of the draughtsman, that will determine within which of the legislative lists the legislation falls and for this purpose the legislation must be scrutinised in its entirety". *A. G. for Ontario v. Reciprocal Insurers*, (1924) A.C. 328 at p. 337. See

Union Colliery v. Bryden, 1899 A.C. 580; *John Deere Plow Co. v. Wharton*, 1915 A.C. 530; *Great West Stoddley Co. v. The King*, (1921) 2 A.C. 91.

"With respect to".—The powers conferred on the legislatures are "with respect to" the matters enumerated in the lists in the schedule, an expression which occurs in a similar context in S. 51, of the Constitution of the Australian Commonwealth. It was stated in the *Waterside Workers Case*, (28 Com. L.R. at p. (232)) "The words 'with respect to' are not words of enlargement but of indication. They indicate that you are to look to the following enumeration to see the actual subject of the power". According to Higgins, J., however the expression means "on the subject of". In other words the subject designates the centre not the circumference of the power, and the legislature can by definition increase the area of its legislative field. (*The Union Label case: A. G. for N. S. Wales v. Brewery Union*, 6 Com. L.R. 469 at p. 610). And in *Macarthur's case* (28 Com. L.R. 530 at p. 564) he said "we have to determine in each case what is the subject of the legislation what subject is the Act—with respect to—what it effects—not what things or operations it may indirectly affect." The practical effect of this construction would be to clothe the legislature with power to make ancillary provisions which may be incidental or necessary to give effect to the legislation on the enumerated subject though such provision is not strictly or directly referable to an actually enumerated power.

Incidental powers.—The power to enact incidental or ancillary legislation is included in the grant of a substantive power and follows without express provision therefor. (*A. G. for Ontario v. A. G. for Canada*, 1894, A.C. 189). "When you have got a main purpose expressed and ample authority given to effectuate that main purpose, things which are incidental to it and which may reasonably and properly be done and against which no express prohibition is found may and ought *prima facie* to follow from the authority for effectuating the main purpose by proper and general means." Lord Selbourne in *Small v. Smith*, (10 A.C. 119 at p. 129). The existence of incidental powers are assumed for instance in S. 106 *infra*. The rule enunciated by the Privy Council in *A. G. for the Commonwealth of Australia v. Colonial Sugar Refining Co.*, 1914 A.C. 237 in regard to the construction of the Commonwealth of Australia Act, that the express grant to the Commonwealth of 'incidental powers' in Pl. XXXIX, of S. 51, attaches only to powers expressly enumerated and that there is no residual power to which the incidental power can be attached, would it is submitted be applicable in the construction of this Act; for here, as in Australia there is no residual power vested in the centre. But that rule has but a limited application and where a power is clearly incidental to legislation in an exclusively Federal field it would prevail notwithstanding that the 'incidental' standing by itself would fall within the sphere allotted exclusively to the provinces.

Apart from colourable legislation already dealt with, it is submitted that the limitation enunciated by Lord Davey in *Rossi v. Edinburgh Corporation*, 1905 A.C. 21 (29), "when an instrument of expressly limited length or nature is designated for use, but found in practice insufficient to reach the point intended, then there is no legal principle which warrants its lengthening or transformation merely because the expected result has not been achieved. Where both end and means are strictly marked out there is no right either to use other means to attain the specified end or to use the specified means for unauthorised ends" has no application to legislatures with plenary powers of legislation in regard to the subjects committed to them.

Severability.—Where any legislature attempts to legislate with respect to matters not allotted to it, i.e., in respect of cases arising under sub-Ss. (1) & (3) the resulting legislation is *ultra vires* and invalid. Where an enactment is found to contain provisions which are *ultra vires*, as comprehending subjects not reserved to it, but reserved to another legislative body, it does not follow that the whole enactment is necessarily invalid for where some provisions only offend such distribution of power they may be severable from the rest. Or while the subject-matter of the Act is within the constitutional power of the legislature it may purport to apply it to persons and things beyond its power, e.g., in excess of the limits indicated in S. 99; in such a case the legislation may be entirely valid as to some classes of cases but bad as to others.

The principle of the severability of the subject is not to be confused with the maxim *ut res magis valeat quam pereat*, which is a rule of construction. If it be possible

to read the enactment as within the ambit of legislative competence, it would be so construed; but the principle cannot be applied if it appears that the legislature intended to apply the provisions as a whole to a state of facts not within its competence, or "if the offending provisions are so interwoven into the scheme that they are not severable". In *re The Initiative and Referendum Act*, (1919) A.C. 935; see also *A.-G. for British Columbia v. A.-G. for Canada*, 1937 A.C. 377 at pp. 388-389.

The test as to severability has been formulated thus: "The whole Act is not void unless all the provisions are connected in subject-matter, depending on each other, operating together with the same purpose, or otherwise so connected together in meaning that it cannot be presumed that the legislature would have passed the one without the other. The point is whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is struck out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained. On the other hand, if the provisions are so mutually connected with and dependent on each other as conditions, considerations or compensating for each other as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect, the legislature would not pass the residue independently, then if some parts are unconstitutional all the provisions which are thus dependent, conditional or connected must fall with them." (*Cooley Constitutional Limitations* p. 246 *et seq.*)

In every case the question is one of the intention of the Legislature. But the rule in the form stated by Cooley, *viz.*, that even in a case where the provisions may be severed, the Court must be satisfied that the legislature would have passed the enactment in the truncated form, before it can pronounce it valid, has not been accepted in Australia, and it is submitted that the test laid down by Griffith, C.J., in *Whybrow's Case*, (11 Com. L. R. 1) "whether the Statute with the invalid portions omitted would be substantially a different Law as to the subject matter dealt with by what remains from what it would be with the omitted portions forming part of it" is better and in harmony with that adopted by the Privy Council in *Attorney-General v. Colonial Sugar Refining Co.*, (1914 A.C. 237).

From this it follows that "where the Act discloses a connected scheme or the valid provisions are merely ancillary to the invalid portion, separability is not possible". (*Vacuum Oil Co.*, 51 Com. L.R. 677. *A.-G. for Br. Columbia v. A. G. for Canada*, 1937 A.C. 389). If the object of the Act is single and will not be attained by partial execution the whole must go. If the result of the invalid portions being struck out be to leave the balance with an effect which is nugatory or absurd the whole will fail. For there must remain an Act which is complete, intelligible, valid and which can be executed by itself. (Wynes, *Legislative and Executive powers in Australia*.)

Sub-S. (4).—Province here means a Governor's Province, (S. 46) in respect of which area alone the Federal Legislature's powers to legislate in regard to subjects in List II is excluded. As we have already seen the Federal Legislature functions as the law making body for the Chief Commissioner's Provinces which are the other areas in British India. Further, extra-territorial legislation in regard to matters enumerated in the Provincial List would be within the powers of the Federal Legislature.

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

Extent of power to legislate for States.

NOTES.

S. 101.—The provisions of S. 100 relate to the exercise of legislative powers in and for British India. In the case of the Indian States, however, dealt with by this section the powers of the Federal Legislature do not extend to all the matters comprised in the list, but only to such of them as are specified by the Ruler in the Instrument of Accession "as matters with respect to which the Federal Legislature may make laws for his State and subject to the limitation if any to which that power may be made subject" S. 6 (2).

Explaining the basis of the section, *Sir Samuel Hoare* said: "The whole essence of federation is that the units surrender definite powers, but beyond that field the Federal Legislature has no power over the units at all. That is exactly the position. The Federal Legislature has power over the units to the extent of the federal field; and in the case of Indian Princes to the extent that they have surrendered their powers in the Instrument of Accession. That is altogether in keeping with the letter and spirit of every federal legislature in the world. It would be contrary to every theory of federation if the Federal Government had more extended powers". (*Parl. Deb.*, Vol. 299, Col. 1932).

In considering the validity of Federal Legislation in its application to the Federating States, the question of onus might sometimes assume importance. The general rule no doubt is in favour of the validity of legislation on the application of the maxim *ut res magis*; but in the case of a legislature with strictly limited powers, the rule enunciated by the Judicial Committee in *A. G. of Australia v. Colonial Sugar Refining Co.*, (1914) A.C. 237 stating that the onus of showing that any particular subject-matter on which the Commonwealth Parliament purports to legislate is on those who assert it, might seem to be particularly applicable to the case of the Federal Legislature *vis-a-vis* the Federating States; for onus is dependent on the location of residuary powers.

102. (1) Notwithstanding anything in the preceding sections of this chapter, Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Power of Federal Legislature to legislate if an emergency is proclaimed.

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and
- (c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

NOTES.

S. 102.—Power of the Federal legislature in Emergency.

S. 102.—"The Clause only deals with a state of emergency in which the security of India is threatened either as a result of war or of internal disturbance. In order to

deal with a very serious position like that, it is proposed that the centre shall have the right to take over for the necessary time the legislative field allotted to the Provinces". (*Parl. Deb.* Vol. 299, Col. 1935.)

Even in the absence of a provision in terms of this section in the Dominion Constitutions, it has been held, that the Federal Centre has power in times of emergency or national peril to invade the provincial legislative field. For instance Lord Haldane delivering the judgment of the Judicial Committee in *The Board of Commerce Act*, 1919, ((1922) 1 A.C. 191 at p. 197) said that in special circumstances such as a great war or a famine, a subject might become of such paramount and overriding importance as to justify Dominion action under S. 91, notwithstanding its falling under S. 92, in normal conditions; and the learned Lord's observation in *Fort Frances Pulp, etc. v. Manitoba Free Press*, 1923 A.C. 695, is also in point:—"The general control of property and civil rights for normal purposes remains with the Provincial Legislatures. But questions may arise by reason of the special circumstances of the national emergency which concern nothing short of the peace, order and good government of Canada as a whole. It may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of exceptional interference and which becomes *ultra vires* when it is no longer called for. In such a case the law as laid down for the distribution of power in the ruling instrument would have to be invoked."

The White Paper of 1933 did not contain any provision corresponding to that contained in this section, but instead had as the first subject in the Federal list, "The common defence of India in time of an emergency declared by the Governor-General". The question whether the Commonwealth power of "Defence" could in time of war be invoked so as to permit interference in matters within the jurisdiction of the States came up before the High Court of Australia in the leading case of *Farey v. Burrell*, (21 Com. L.R. 433) where they sustained the validity of a regulation made under the War Precautions Act fixing the maximum price of bread in particular localities, by a majority of three to two. But the judgments in the case disclosed such acute differences of opinion that the Joint Parliamentary Committee recommended the insertion of a provision in the body of the Act putting the matter beyond the pale of controversy. They explained the position thus: "The intention of this item was to give the Federal Legislature and in consequence the Governor-General for the purposes of his personal legislative power, extensive powers on the lines of the English Defence of the Realm Act. We fully agree that it is essential that such a power should be vested in the Federal Authorities, but we are of opinion that it should not be left to be deduced from a schedule of legislative powers, but should be the subject of an express provision in the body of the Act. . . . The provisions which we recommend in order to place this vital matter beyond doubt should make it clear that the emergency power in question is not limited to "defence" in the sense of repelling external aggression; but that it covers internal disturbance also, and that, where an emergency has been declared by the Governor-General, the Federal Legislature may make on any subject laws which will override any laws which conflict with them, the Governor-General's personal legislative power being of course co-extensive in this respect with the power of the Federal Legislature. As an additional safeguard we would require that every proposal for legislation in the exercise of this power should be subject to the previous consent of the Governor-General. We recognise that the inclusion of internal disturbance (which should be defined in terms which will ensure that for this purpose it must be comparable in gravity to the repelling of external aggression) among the circumstances, which in an emergency, will enable the Governor-General to confer upon himself, or upon the Federal Legislature, as the case may be, the power to invade the exclusively provincial sphere and override provincial legislation within that sphere, may be criticised as a derogation from the general plan of Provincial Autonomy which we advocate; but in the absence of such a power we could not regard the Governor-General as adequately armed to discharge the ultimate responsibility which rests upon him for the peace and tranquility of the whole of India. (J.P.C. Report para. 238).

The proclamation of Emergency is mainly intended to clothe the Governor-General personally with power to invade the subjects in the provincial field by legislation under Ss. 43 and 44, as the quantum of the Governor-General's personal legislative power is

co-extensive with that of the Federal legislature. See the restrictions on the power of the Federal Legislature in the proviso to sub-S. (1).

The effect of the proclamation of emergency is so to speak to transfer the subjects contained in the Provincial List II to the concurrent list; and principles similar to those contained in S. 100 (2) and S. 107 are made applicable to such subjects: Sub-S. (2).

Sub-S. (3) (c).—If it is confirmed by a resolution of the Houses of Parliament the duration of the proclamation would be as laid down in the resolution.

Sub-S. (4).—A law made by the Federal Legislature would include an Ordinance issued by the Governor-General and a Governor-General's Act. See S. 311 (6).

The laws enacted by the Federal Legislature during the continuance of the Proclamation are temporary only and expire after 6 months from the termination of the proclamation. Cf., S. 45 and S. 93, where no provision is made in regard to things done during the continuance of the temporary enactment.

The general rule is that after the expiration of a temporary statute, in the absence of a provision to the contrary, no proceedings can be taken on it and proceedings already commenced *ipso facto* determine. *Miller's Case*, 1 Wm. Bl. 451, 27 Hals. p. 158. Therefore offences committed against temporary Acts must be prosecuted and punished before the Act expires and as soon as the Act expires any proceedings which are being taken against a person will *ipso facto* terminate⁹. (Crane on Statute-law.)

The effect of the saving at the end of the section would however appear to be to permit proceedings to be continued in respect of matters which are concluded prior to the ceasing of the enactment. The language would even seem to sustain a wider construction permitting proceedings to be started after the termination of the enactment provided a right has been perfected or a liability incurred prior to that time.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

NOTES.

S. 103.—The section is necessitated by the fact that under S. 99, the legislative powers of a province are confined to the limits of that province, and that if a body having jurisdiction within more than one province, e.g., like a Joint Public Service Commission for 2 or more provinces, was desired to be set up, there would be no power in the provinces to do so. With the disappearance of a central legislature with power to invade the provincial field at all points, there had necessarily to be devised some machinery for coordination of policy between the provinces in matters of common concern to them. As the Statutory Committee pointed out, there is urgent need for the establishment of institutions for research in the fields of Forestry, Agriculture, health problems, all subjects in the Provincial list. This recommendation was endorsed by the Joint Parliamentary Committee and accordingly provision has been made for the creation of Interprovincial councils by Order in Council (§ 135).

This section would have to be utilised for providing the necessary legislation investing these councils with functions and powers.

The presence of this section obviates the limitation set out in the judgment of Lord Atkinson in *City of Montreal v. Montreal Street Railway, Co.*, (1912) A.C. 333, where it is pointed out that inconvenience of provincial administration in a matter concerning more than one province does not clothe the Dominion Parliament with legislative power in that field.

The resolutions permitting the Federal Legislature to enact laws in the Provincial List with regard to any particular province, have to be passed by both the Chambers of the Legislature of each of the Provinces, where there is more than one Chamber in

any province. It need not be stated that if either Chamber fails to concur in such a resolution, the principle or machinery of the joint sitting cannot be applied to the case.

The section does not expressly state that a resolution once passed permitting or inviting the Federal Legislature to legislate may be revoked, but it would seem that such a resolution may be revoked at any time so as to deprive the Federal Legislature of the power to legislate for that Province in the future.

104. (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs

(2) In the discharge of his functions under the section the Governor-General shall act in his discretion.

NOTES.

S. 104: Residuary Power.—Explaining the principle adopted in framing the legislative lists and in enacting the machinery devised by this section in regard to the location of the residuary power *Sir S. Hoare* said:

"We found that Indian opinion was very definitely divided between, speaking generally, the Hindus who wish to keep the predominant powers in the Centre, and the Moslems who wish to keep the predominant power in the Provinces. The extent of that feeling made each of these communities look with the greatest suspicion at the residuary field, the Hindus demanding that the residuary field should remain with the Centre and the Moslems equally strongly demanding that the residuary field should remain with the Provinces.

"My Hon. Friend will believe me when I say that the feeling was very deep and very bitter on this issue. We tried year after year not only in the Joint Select Committee but also in the various Round Table Conferences to bridge the difference, but the only bridge that we could find between these two diametrically opposite points of view was to have three lists, namely, the Federal List, the Provincial List and the concurrent List, each as exhaustive as we could make it, so exhaustive as to leave little or nothing for the residuary field. I believe that we have succeeded in that attempt and that all that is likely to go into the residuary field are perhaps some quite unknown spheres of activity that neither my Hon. Friend nor I can contemplate at this moment. We find that we have really exhausted the ordinary activities of Government in the three other fields. I agree with my Hon. Friend that it means complications. I believe that it also means the possibility of increased litigation."

The decision of the Governor General that a subject is not covered by the enumerated matters in the three lists would not seem to be final, and the question could be challenged in the Courts. But having regard to the importance of the subject, it is not expected that he would decide such matters without obtaining the advisory opinion of the Federal Court under S. 213. But his decision allocating the subject—if in fact it is a residue—to the Provincial or Federal Legislature is not open to question in the Courts. The section states that the Governor General might assign the subject 'either to the Federal or the Provincial Legislature' which seems to raise a doubt as to whether he can assign such a residuary subject to the concurrent list. It is however submitted that he can assign it to any of the three lists.

105. (1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however—

Application of Naval Discipline Act to Indian naval forces.

(a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of authorising or requiring any thing which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf; and

(b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the purpose of regulating the relations of those forces and ships the forces and the ships of the Indian navy.

(2) Notwithstanding anything in this Act or in any Act of any Legislature in India, where any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

NOTES.

Sub-S. (1).—The Federal Legislature has no power to affect the Naval Discipline Act, (S. 110).

This section reproduces the provisions of S. 66 of the Government of India Act, 1919—which was inserted by the Government of India Navy (Indian Navy) Act 1927. The Federal legislature is conferred power to “make a law for the regulation or discipline of any naval force raised in British India and to members of and persons attached to, employed with or following the force wherever they may be” S. 99 (2) (c) *supra*, thus eliminating the bitter controversies that arose in Canada in 1910 when she purported to pass legislation controlling her newly raised forces assuming that she had powers of extra territorial legislation thereto.

The Adaptation provision in sub S. (1) is on the lines of the Naval Discipline Act, 1911 in relation to the Dominions. Cf., S. 177, Army Act, S. 177 Air Force Act.

Sub-S. (2).—This corresponds with the position of the Dominions under the Naval Discipline Act, 1911.

In the converse case when those serving His Majesty's Navy are transferred to and serve in the Indian Navy they are rendered subject to the laws enacted by the Indian Legislatures by S. 90-B, Naval Discipline Act, 1922.

For the history of the Indian Navy and the legislative provisions thereto see *Libert Government of India*, p. 233.

106. (1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

Provisions as to legislation for giving effect to international agreements.

NOTES.

S. 106.—As contrasted with the provision in the American Constitution where treaties entered into by the President are regarded as part of the law of the Constitution, (Article VI), a treaty is in British jurisprudence treated merely as a contract or convention between two nations and does not become a part of the law of the land unless by an express Act of the legislative body. A treaty does not confer rights or impose obligation between a State and a subject or as between subjects and such rights can be conferred only by legislative enactment of a duly competent legislature. Cf., *Walker v. Baird*, 1892 A.C. 491.

"Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other Countries, the stipulations of a treaty do not within the Empire, by virtue of the treaty alone, have the force of law". *A.-G. for Canada vs. A.-G. for Ontario*, 1937 A.C. 326 (347).

In the case of a unitary Constitution the problem of legislation in this regard for the implementing of treaties is comparatively simple. But in a Federal Constitution the problem assumes great complexity. The question has been whether the power conferred to enter into treaties carries with it, as incidental thereto, a power to invade provincial subjects to enable the Dominion to implement the treaty?

The British North America Act §. 132 provides.

"The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign countries, arising under Treaties between the Empire and such foreign countries."

On a construction of this section it has been held that in cases coming within its scope, i.e., where the obligations arise under a treaty between the British Empire and Foreign countries as distinguished from cases where Canada itself is a party to the convention or treaty, the Dominion Parliament has power to enact implementing legislation; notwithstanding that in part it might trench on subjects exclusively assigned to the Provinces. (*The Radio Broadcasting case*, 1932 A.C. 304, and the *Aeronautics Case*, *Ibid.*, p. 54.) In cases however where the treaty in question does not fall within §. 132, there is no power to override the normal distribution of powers under §§. 91 and 92; a position similar to that contained in this section. *A.-G. for Canada v. A.-G. for Ontario*, 1937 A.C. 326. It is submitted that it is not correct to speak of the Radio and the Aeronautics cases as having been overruled by the *Labour Conventions case* last mentioned. Of course, with the emergence of the new International Status of the Dominions consequent upon the Statute of Westminster, there would be no scope for the rule in the earlier cases in 1932 A.C.

Under this section, the law would be different and there would not be power to invade Provincial subjects except with the consent of the Governor, which presumably means the Governor on the advice of his Ministers. In the result, therefore, if the Federal authority desires to enter into a treaty which requires legislation affecting a province or State for its implementing, and the subject is one which does not fall under any enumerated head of Federal Legislative power, it would have to take the previous consent of the province before entering into such treaty or insert a condition in the treaty rendering the assent of a Province necessary for its coming into effect.

As however most of the subjects which are likely to be the subject matter of international agreement have been included in the concurrent list, the difficulty has been greatly reduced if not altogether eliminated.

107. (1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

Inconsistency between Federal laws and Provincial, or State laws.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void.

NOTES.

S. 107.—This section deals with the topic of the repugnance of Federal and Provincial Legislation in the field of the concurrent list. The first sub-section enacts the predominance of Federal legislation in the event of repugnance and for this purpose existing Indian legislation is placed on the same footing as future legislation. In respect of this matter, the following propositions which have been established by the decisions on the Australian Constitution, where the main enumeration is of the list of concurrent subjects and where by reason of S. 109 predominance is given to Commonwealth legislation in the event of repugnancy, may be taken as applicable to the circumstances here; with the modification necessitated by the section placing Indian Law in the same position as Federal legislation.

1. The power of a State or a Province to legislate is not cut down until the Federal Legislature intervenes by appropriate legislation.

2. The State or Provincial law may be only partially superseded by Federal legislation and it is only to the extent of the inconsistency that the Federal legislation predominates.

3. Federal Legislation may result in placing a concurrent obligation on the individual existing side by side with an obligation of a precisely similar character in which event both laws would operate, e.g., land and income-taxes.

4. Where a State or provincial law is entirely superseded by the exercise of the legislative power of the Federation, that sphere of legislative activity becomes in respect of that subject-matter transformed into an exclusive power of the Federation. [See Kerr on Law of Australian Constitution.]

The last proposition must here be qualified by the provisions of sub-§, (2) which establishes a machinery for the Provinces to exercise jurisdiction in such a field, a provision absent in the Australian Constitution.

Competency of Federal Legislature to repeal Provincial enactment.—

no authority to repeal any provincial enactment directly, even though the subject-matter of the legislation be one falling within its legislative competence in the concurrent field. The abrogation of a Provincial Act by the Federal Legislature can only be effected where there exists repugnancy between its provisions and those of the Provincial legislation, and if the existence of the repugnancy is a matter of doubt or dispute, the controversy would have to be settled by the judiciary alone, and cannot be resolved by the Federal Legislature. See *A. G. for Ontario v. A. G. for Canada*, 1896 A.C. 346 at p. 366.

Effect of Repeal of Federal Act.—Would the repeal of a Federal Act on a matter included in the concurrent list revive a Provincial Act which was in conflict with or was superseded by Federal Legislation? It is submitted that the effect of S. 107 being merely to supersede the provincial law to the extent of the repugnancy

and not to diminish the power of the province in concurrent matters, it would revive in the circumstances stated, without any necessity for re-enactment. It is true that the expression used to describe the provincial legislation in the event of the repugnancy is "void" but it is 'void' only so long as it continues to be repugnant to a Federal Act, and when the inconsistency is removed by the repeal of the Federal enactment, the law which was previously 'void' to the extent of the repugnancy would resume its full force and effect. Cf. *A. G. for Ontario v. A. G. for Canada*, 1898 A.C. 348 at 367.

Sub-S. (2).—This introduces a novel machinery for enabling the Provincial legislatures to supersede a Federal Law on a matter within the concurrent list, and the proviso enacts the restriction subject to which the Federal Legislature may again supersede Provincial Legislation on the same topic. In assenting to Provincial Bills reserved for his assent under this sub-clause, the Governor-General is by para. XII of the Instrument of Instructions, directed "to have due regard to the importance of preserving substantially unimpaired the uniformity of Law which the Indian Codes have hitherto embodied".

Sub-S (3).—S. 101 restricts the power of the Federal Legislature in relation to Indian States to legislation in strict conformity to the limits and conditions imposed by the terms of the Instrument of Accession, and this sub-section enacts the supremacy of such valid Federal Legislation over State legislation which is repugnant to or inconsistent with it.

Repugnant.—"Repugnant" means "inconsistent with" or "contrary to". Such contrariety may be in quality, in matter or in respect of the form prescribed. *Poster's case*. (11 Coke Rep. 56 B). According to Higgins, J., repugnance must involve either directly or ultimately a contradictory proposition, probably contradictory duties or contradictory rights. (*A-G. for Queensland v. A-G. for Commonwealth*, 20 Com. L.R. 148, at p. 178). In other words there must be a direct collision between the provisions in the two enactments before they can be pronounced to be repugnant to each other. He further elucidated his proposition in these words in his dissenting judgment in *Clyde Engineering Co. v. Coburn*, (37 Com.L.R. 466). "Etymologically things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or provision in the one law conflicts directly with the command or power or provision in the other. Where two legislatures operate over the same territory and come into collision, it is necessary that one should prevail, but the necessity is confined to actual collision as when one legislature says "do" and the other says "don't"."

His view therefore approximates the position to what is required to constitute an implied repeal of earlier by later enactments. In fact he cites the decision in *Kutner's case*, [(1891), 2 Q.B. 267] in support of his theory. A. L. Smith, L.J., enunciated the rule as to implied repeal thus in *Kutner v. Phillips*, [1891] 2 Q.B. 267: "A repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provision or of an earlier one that the two cannot stand together. Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied; or unless there is a necessary inconsistency in the two Acts standing together". The test that is suggested by these cases is whether it is possible to obey the two laws together—or whether there is such an inconsistency that it is not possible to do so.

A contrary view however has been taken in the Australian Courts as to what constitutes repugnancy. As was explained in the majority judgment in *Clyde Engineering Co. v. Coburn*, (37 Com.L.R. 466) the test whether it is humanly possible to obey both the laws is not a final or decisive test of the matter. "Two enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. Statutes may do more than impose duties, they may for instance confer rights and one statute is inconsistent with another when it takes away a right conferred by the other even though the rights be one which may be waived or abandoned without disobeying the statute which conferred it." And Isaacs, J., speaking of types of repugnancy said "If a competent legislature expressly or impliedly evinces its intention to cover the whole field that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field. If such a position

is established the inconsistency is demonstrated not by comparison of detailed provisions but by the mere existence of the two sets of provisions. Where that wholesale inconsistency does not occur, but the field is partly open then it is necessary to enquire further and possibly to examine and contrast particular provisions. . . . It is plain that it may be quite possible to obey both simply by not doing what is declared by either to be unlawful and yet there is palpable inconsistency". Even the majority judgment in the *Clyde Engineering case*, states that the rule of construction laid down by them is identical with the rule for determining implied repeals in England. But the test of "obedience" has been favoured as a test in *Flannagan v. Shaw*, [(1920) 3 K. B. 96 C.A.), which has since been followed in *Wallwork v. Fielding*, (1922) 2 K.B. 66 C.A.; a test which was laid down as early as 1878 in *Hill v. Hall*. (1 Ex.D. 411).

So that if the English rule of construction regarding implied repeals were applied to the determination of inconsistency under this section the test of obedience will be a conclusive test. It would also seem that the best of obedience would be in consonance with the proper construction of the doctrine of the "occupied field" enunciated by the Judicial Committee in *Forkes v. A. G. Manitoba* 1937. A.C. 260 at pp. 273, 274. It would be a point for consideration whether the view of the majority in the *Clyde Engineering Case*, was not unconsciously tinged by the American doctrine of immunity of instrumentalities, notwithstanding the rejection of that doctrine by the Australian High Court in the *Engineer's case*, (28 Com.L.R. 129).

CHAPTER II.

RESTRICTIONS ON LEGISLATIVE POWERS.

Sanction of Governor-General or Governor required for certain legislative proposals.

108 (1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or

(d) affects the procedure for criminal proceedings in which European British subjects are concerned;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

NOTES.

S. 108.—Under the Government of India Act 1915, which consolidated earlier enactments on the point, the previous consent of the Governor-General was requisite to the introduction of legislation affecting religion, religious usages and rites. (*Vide* S. 67 (2) (b) and Cf., Reservation of Bills—Rules—Notes to S. 75 *ante*. This restriction has been omitted here on the ground that legislation of this type should be introduced on the full and unfettered responsibility of Indian Ministers, and on the ground that in a matter of that sort it was undesirable that their responsibility should be shared by the Governor or Governor-General. *See* J.P.C. Report para. 141.

Sub-S (1) (a).—Explaining the machinery of this section and in particular the matters mentioned in Cl. (a) the *Attorney-General* said:

"S. 65 (of the Government of India Act, 1915) provides that there shall be no power to make a law repealing or affecting any Act of Parliament passed after 1860. S. 84, of the Government of India Act says that if any Act is passed which does repeal or affect an Act of Parliament passed after 1860, it shall be void to the extent of the repugnancy.

"Now the question arises as to what powers the provisions of this Bill will give the Federal Legislature in relation to an Imperial Act of Parliament. The Government might take one of three courses. The first course possible is that they should maintain the existing position. That is to say, that the position as it is under Ss. 65 and 85 of the Government of India Act, would remain and any Act which was repugnant to an Imperial Act of Parliament would be impossible or, if passed, would be void. The second course would be to give the Federal Legislature full and unrestricted powers to do what they like with an Imperial Act of Parliament; in other words, to give them the full freedom of legislation which is now conferred upon a Dominion like Canada to take advantage of the full use of the Statute of Westminster. That is the second course. The Government do not propose either of those courses. They neither propose to restrict the Indian Legislatures in the way in which they are at present restricted, nor do they propose to give them the full freedom to legislate irrespective of anything that the Imperial Parliament may have done or may do in the future. The Government propose, as the Bill shows, to take the middle course. The proposal is to select certain subjects and rule them out of the competence of the Indian Legislature. In no circumstances can a Bill touching these matters in S. 110 (b) come within the competence of the Indian Legislature. The proposal then is that, subject to the ruling out of these matters, the Indian Legislature shall be competent to legislate with the previous sanction of the Governor-General in his discretion. That is the provision in sub-S. (1) of Cl. 108. But there is another safeguard which Hon. Members have not noticed, perhaps they overlooked, and that is that by the Instrument of Instructions the Governor-General is directed by para. 27 (para. 13) not to assent to—

"any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India".

Such a Bill be reserved—

"for the signification of Our pleasure".

"There is a similar provision in the Instrument of Instructions to the Governor in para. XVIII. Therefore, in so far as any Bill which is introduced which is repugnant to an Act of the Imperial Parliament, or which deals with any of the matters referred

to in para. (b) of Cl. 110, it is outside the competence of the Indian Legislature altogether. If, on the other hand, it is a Bill which does not deal with any of these matters it is still subject to the safeguard of securing the sanction of the Governor-General in his discretion. The Hon. Member for Mid-Bedfordshire says that that does not move him in the least; that he regards it as of no consequence. I do not agree with him. But even assuming that is of no consequence there is a provision at the other end that the legislation shall be reserved, which will mean that the view of *His Majesty's Ministers in this country will prevail*. Over and above all this there is the provision in para. (a) of Cl. 110 that—

“nothing in this Act shall be taken to affect the power of Parliament to legislate in British India or any part thereof”. (*Parl. Deb.* Vol. 299, Col. 1977).

Sub-S. (1) (b).—The reason for the restriction is that such Acts or Ordinances have been passed in the exercise of the discretion of the Governor-General.

Sub-S. (1) (c).—This provision is based on a principle similar to the previous clause. This area, it would be seen, is outside the sphere of Ministers and in which the Governor-General is directly responsible to the Secretary of State and Parliament. Cf. S. 14. The Bill however proposed to include in this sub-clause only the reserved departments; but the whole area of discretionary powers was brought into the clause by amendment during the Committee stage on the ground that it was a drafting amendment.

Sub-S. (1) (d).—“This Joint Select Committee regarded it as essential as one of the safeguards for the police, that legislation dealing with the internal organization and discipline of the police should only be introduced with the Governor-General's previous assent. Their reason was that the morale of the police depended so much upon, the Rules and Acts, governing the organization of the police in India that rash meddling either with the rules or with police legislation, might in a short time destroy the morale of the police and ruin the organisation. The Joint Committee therefore came to the opinion, and the Government very strongly agree with them, that legislation of this kind should only be introduced with the previous assent of the Governor-General.” (*Parl. Deb.* Vol. 299, Col. 1989).

Sub-S. (1) (e).—The present provisions in the Criminal Procedure Code, representing as they do the compromise arrived at by the Racial Discrimination Committee in 1923, have been found to work smoothly and without producing dissatisfaction to the communities concerned. The intention is that if the state of affairs now prevailing is proposed to be changed, the Governor-General should be a party to and share in the responsibility for introducing such legislation.

Discriminatory Taxation of British Subjects in United Kingdom:

Sub-S. (1) (f).—“This deals with a question which is the subject of S. 112. S. 112 provides against any discriminatory taxation of British subjects domiciled in the United Kingdom, but there is a possible gap in the provision for this reason: It might be possible to allow a person to earn money and save money by carrying on a profession or conducting a trade while he was resident in India, and then, after he has ceased to be a resident in India, to impose upon him or people of his class discriminatory taxation almost of a penal nature by reason of its severity. It is proposed by this subsection to require the previous sanction of the Governor-General, in his discretion, in the case of legislation which subjects persons not resident in British India to greater taxation than persons resident in British India. It applies to companies—which are dealt with under S. 112—as well as to individuals.

“A great deal of thought has been given to the best way of dealing with the subject. It might possibly have been dealt with by some enactment to the effect that non-resident persons were to be treated, for purposes of taxation, as if they were resident persons and then preventing that provision from being altered. But that course seemed likely to result in tying the hands of the Indian Legislature too tightly and preventing them doing certain things which were perfectly legitimate and proper. The House probably knows that the taxation of non-residents is adopted by a great many countries, in varying degrees of severity, and the idea in this case is not to hamper the Indian Government as regards the imposition of any necessary taxation which may be described as reasonable. The object is to prevent discriminatory taxation in the case of non-resident persons of such a character that it exceeds the bounds of reasonableness—whatever may be the practice in the case of some countries with which we are familiar at the present time.

"Another suggestion was that we might lead to the desired result by some provision as to reciprocity. But it is very difficult to devise measures of reciprocity. The differences between Indian taxation and our taxation are so great that it is practically impossible for a draftsman to devise a form of words which will lay down a basis of reciprocity, in such a way as to ensure the desired result. It has therefore been found necessary to fall back upon the somewhat elastic provisions of Cl. 108 and to give the Governor-General the power to withhold the necessary previous sanction from any legislation imposing penal taxation upon non-residents. If the taxation is of a comparatively mild character, the Governor-General, no doubt, would not feel that it was a matter upon which he needed to intervene, and he would, presumably, in that case, give his previous sanction." (*Parl. Deb.* Vol. 302, Cols. 853-854).

Sub-S. (1) (g).—Vide S. 49 of the Indian Income Tax Act which provides for the relief. A Bill or amendment seeking to alter this law would need the Governor-General's previous sanction.

Sub-S. (2).—This deals with the introduction of legislation in Provincial Legislatures which needs the previous consent of the Governor-General. It singles out those provisions of sub-S. (1) which could come within the purview of Provincial Legislatures, regard being had to the Provincial List, and requires in their case the previous sanction of the Governor-General.

If the requisite consent has not been obtained in respect of this class of legislation, and such a bill has not been reserved for the consideration of the Governor-General so as to receive his assent, the mere assent of the Governor does not cure the irregularity of the absence of previous sanction. *See* S. 109 (2) (b).

The principle of the curative provision in S. 109 is that the assent of the authority whose previous consent was necessary or that of a higher authority cures the irregularity caused by previous sanction not being obtained in a case where such sanction is required. The assent of a lower authority, however, does not cure the irregularity.

109. (1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills

No Act of the Federal Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

(a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty;

(b) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General, or by His Majesty.

NOTES.

S. 109.—Sub-S. (1): This is enacted *ex abundanti cautela*.
Sub-S. (2) This generally reproduces the provisions of the Government of India Act, 1919, S. 80-A (3) proviso. *See, further, Notes to sub-S. (2) of previous section.*

Savings. **110.** Nothing in this Act shall be taken—
 (a) to affect the power of Parliament to legislate for British India, or any part thereof; or
 (b) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, or dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the

Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

NOTES.

S. 110: (a) Saving of Power of Parliament.—The creation of representative legislatures and the grant to them of legislative powers do not affect or derogate from the powers of Parliament to legislate for the Colony or area.

"The Colonial Laws Validity Act, 1865 has the effect of preserving the right of the Imperial Parliament to legislate for the Colonies, notwithstanding the grant of Legislative power on the subject-matter to the Colony". *Ex parte Marais*, 1902 A.C. 51. This sub-section expressly provides what the Privy Council deduced from the implications of the Colonial Laws Validity Act.

Having regard to the restricted powers conferred on the Indian Legislatures and in view of the denial of power in them to alter the Constitution, it is to Parliament, that one has to turn to liberalise the Constitution. In the Federations which have sprung up in the British Empire up to now (ignoring the conditions of the Federated Malay States which cannot be termed as within the British Empire) all the federating units have been within the Sovereignty of Parliament; and whether as a matter of prudence, expediency or convention, Parliament would *suo motu* enact legislation applicable to them or not, there could never be any doubt about the *legal capacity* of Parliament to pass legislation affecting both the centre as well as the units. But here in India we are faced with a federation in which a considerable number of the units are outside Parliamentary Sovereignty. It thus introduces a complication and produces effects not only in the sphere of those matters which deal with the Indian States and their position in the Federation, but also those applicable wholly to British India as well. For by reason of S. 6 (3) read with the 2nd Schedule, certain matters which relate wholly to British India are protected from alteration by Parliament; and so long as Parliament desires to keep the Federation functioning, in the form now created, Parliament's powers of altering the Constitution is dependent on the consent of the Federating States. There is thus imposed by S. 6 (5) a quasi-legal fetter on the powers of Parliament, if one might use that expression, just of the same type imposed by S. 4 of the Statute of Westminster.

Sub-Cl. (b) (i).—The sub-clause selects and sets out the restrictions on the powers of the Indian Legislature under S. 65 (2) of the Government of India Act, 1915-19, and in addition certain other provisions which do not concern local matters but are of Imperial significance.

Sovereignty Dominion or Suzerainty of the Crown in any part of India.—The Legislatures, therefore would have no power to authorise or confirm the cession of territory. As to the power of the Crown to cede territory in time of peace see *Damodhar Khan v. Deoram Khanji*, I.L.R. 1 Bom. 367; and *Lakshmi Narain v. Pratab Singh*, 2 All. 1. It may be noticed that assent of Parliament was obtained for the Cession of Heligoland in 1890. The Indian Legislature is forbidden to affect the paramountcy rights of the Crown in regard to the Indian States and except as provided by this Act, powers exercisable under the Foreign Jurisdiction Order in Council 1902. (issued under the Foreign Jurisdiction Act, 1890) are beyond its competence. This restriction is only by way of caution for the Indian Legislature under S. 90 is empowered to legislate only for British India and for the Indian States in so far as they are covered by the Instruments of Accession of the respective States.

Sub-Cl. (b) (ii).—As to the use of the expression "subsequent provisions" see Notes to S. 83 *supra*.

The power to alter the Constitution has always been held to be conceded to Colonies and Dominions from the beginning of responsible Government, and when Boothby, C.J., of Australia questioned its existence, the Colonial Laws Validity Act, 1865, S. 5

expressly enacted: "Every representative legislature shall in respect to the Colony under its jurisdiction have and be deemed at all times to have had full power to make laws, respecting the Constitution, powers and procedure of such legislature provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, Letters Patent, Order in Council, or Colonial Law for the time being in force in the said Colony." The term 'representative legislature' is defined as signifying any Colonial Legislature which shall comprise a legislative body of which one half are elected by inhabitants of the 'Colony' and the term 'Colony' is defined so as to exclude India.

It would be apparent that this can apply only to Colonies where the powers of the legislatures are not enumerated and restricted to particular subjects only as in Canada.

Australia.—The only limitations imposed on Colonies like the Australian States, in the matter of alteration of their Constitutions, it would be seen, is that the law should be passed in *such manner and form* as is required by Act of Parliament, etc. In that sense, the Dominion Constitution could be said to be semi-rigid or to adopt the phraseology in *Macaulay v. King*, 1920 A.C. 691, of the 'controlled type'. S. 128 of the Australian Constitution assumes the existence of the power and enacts the manner in which the power of alteration has to be exercised by requiring an absolute majority of each House and a referendum before it can be effective.

Canada.—As stated already in the case of a constitution like that of Canada, where the powers of the Dominion and State Parliaments are confined to those enumerated in the Act, it would be clear that without express mention there cannot be an alteration of the Constitution; and therefore in the case of Canada, even in small matters recourse to the Imperial Parliament has been necessary for effecting changes. Nor is the position bettered by the Statute of Westminster. For S. 7, expressly saves from the operation of the Act, the repeal or amendment or alteration of the British North America Act, or any Order, Rule or Regulation made thereunder.

In the case of the Provinces of Canada, however, express power is granted to amend the Constitution from time to time except as regards the office of the Lieutenant Governor. S. 7 was inserted in the Statute of Westminster 1931, because the Provinces and the Dominion could not agree on the matter and left it for future solution.

Under this Act.—With the scheme of the distribution of exclusive legislative powers to the several legislatures created by the Act on the model of Canada, it was perhaps inevitable that there could be no power to alter the constitution, for each legislature could exercise its legislation only within a field demarcated and circumscribed by the Constitution Act. It is therefore inherent in the scheme that the internal distribution of powers could not be altered by any legislature or any combination of legislatures. But that would not affect the alteration of provisions which do not affect the distribution of powers, but merely impose restrictions on the legislatures in the field of the powers committed to them.

The White Paper 1933, in Para. 110, indicated that the Constitution Act could be amended by the Legislatures so far as it was thereby permitted. When the matter however came before the Joint Select Committee they stated: "We are satisfied that, though there are various matters in the Constitution Act which after an interval of time, might in principle be left quite appropriately to modification by the Central or Provincial Legislatures, as the case may be, as subsequent experience may show to be desirable, it is not practical politics here and now to attempt to confer such powers upon them. It would be necessary, not merely to decide what matters could thus be dealt with, but also to devise arrangements to ensure that the various interests affected by any proposed modification were given full opportunity to express their views, and that changes which they regarded as prejudicial to themselves could not be forced upon them by an inconsiderate majority. With a Constitution necessarily so framed as to preserve, so far as may be, a nice balance between the conflicting interests of Federation, States and Provinces, of minority and majority, and indeed, of minority and minority, and with so much that is unpredictable in the effects of the inter-play of these forces, it is plain that it would be a matter of extreme difficulty to devise arrangements likely to be acceptable to all those who might be affected; and it would probably be found that the balance could only be preserved, and existing statutory rights only guaranteed, by a number of restrictions and conditions upon the exercise of the Constituent Powers

which would make them in practice unworkable. But, whether or not this can reasonably be regarded as a defect in the Constitution Act, we do not think that the question is one of immediate importance, since we should have felt bound in any event to recommend that the main provisions of the Act should remain unaltered for an appreciable period, in order to ensure that the Constitution is not subject at the outset to the disturbances which might follow upon hasty attempts to modify its details.

"We think, however, that a plan whereby the new Legislatures can be associated with the modification hereafter of the provisions of the Act, or of any Order in Council, relating to the composition and the size of the Legislatures or the qualifications of electors, is very desirable. (J.P.C. Report paras. 375 & 380.)

The procedure outlined by them is that specified in S. 308. (See further Notes to S. 308).

The words "in his discretion and in the exercise of his individual judgment" must be read distributively so as to apply not only to the Governor but also to the Governor-General.

Sub-CL (b) (ii).—The 'Exception' at the beginning of the sub-section refers to the provisions of S. 206 (2) where power is conferred on the Federal Legislature to interfere with the right of appeal as incidental to legislation enlarging the appellate jurisdiction of the Federal Court.

This saving has been necessitated by the grant to the Federal and Provincial Legislatures of the power to affect and enact provisions repugnant to Acts of Parliament under S. 108. In *Nadan v. King*, (1926 A.C. 482) the Privy Council held, the Legislation of Canada purporting to abolish appeals to the Privy Council was invalid as contravening the terms of the Judicial Committee Acts of 1833 and 1844, and therefore falling within the mischief of S. 2 of the Colonial Laws Validity Act which rendered the Legislation of Colonies repugnant to Acts of Parliament applicable thereto invalid to the extent of the repugnancy. In *British Coal Corporation v. King*, (1935) A.C. 500 and in *Moor v. A. G. for Irish Free State*, (1935) A.C. 484 the Privy Council held that with the enactment of the Statute of Westminster repealing as to the Dominions, the limitations on their Legislative powers imposed by the Colonial Laws Validity Act of 1865, S. 2, legislation abolishing the exercise of the special leave was valid and binding on the Judicial Committee. A further argument of Mr. Wilfred Greene, K.C., for the appellant, that the Dominion Acts were invalid as affecting the prerogative of the King in a matter outside the Dominion was answered by saying that "whatever might be the position if the King's prerogative were left as matter of the Common Law, it is here in this particular enactment made matter of parliamentary legislation so that the prerogative is *pro tanto merged in the Statute*," and the statute gives power of amending and altering the statutory prerogative" (*Moore v. A. G. Irish Free State*); a view which is also taken in the *British Coal Corporation v. King*, (1935) A.C. 500. Cf. per Lord Atkinson in *Tata Iron and Steel Co. v. Chief Revenue Authority of Bombay*, 47 Bom. 724 at p. 741=50 I.A. 212=45 M.L.J. 295 (P.C.).

The Commonwealth of Australia Act 1900, S. 74 requires enactments affecting the prerogative right of granting special leave to appeal to be reserved for the Crown's pleasure. Even after the Statute of Westminster if it was desired to abolish such appeals the requirement as to reservation will remain, and can be removed only through the normal procedure of constitutional amendment under S. 128. The other method of achieving that result would be by reserving a Bill containing such abolition for the Crown's pleasure and the Bill would be assented to, having regard to the Constitutional convention in such matters—whereby the Crown acts in accordance with the wishes of the Colony.

CHAPTER III.

PROVISIONS WITH RESPECT TO DISCRIMINATION, ETC.

111. (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as—

(a) imposes any restriction on the right of entry into British India;

(1) Cf., *De Keyzers Hotel v. Bez*, 1920 A.C. p. 508.

(b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession:

Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subject-matter by reference to the same principle of distinction.

(2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

NOTES.

S. 111.—“These provisions are complex, though imperfect. They do not forbid discrimination by caste or colour; duration of residence is provided for, but not continuity.” These provisions are as Dr. Keith remarks “certainly liable to be regarded as oppressive and unfair”, and it is a matter for consideration whether failing a convention, the object of the Chapter could not have been achieved by a less provocative form of legislation. Instead of affecting the legal competence of the legislatures to discriminate, a power reiterated by Courts including the Privy Council as existing in all Colonial Legislatures and Governments, (See for instance the Privy Council decision in *Commissioner for Lands v. Abdul Husein*, 61 M.L.J. 299 (P.C.)) the better course would have been to require reservation of such bills for the consideration of the Governor-General or His Majesty as the case may be. And precedent for this type of restriction is furnished by S. 736 of the Merchant Shipping Act which deals with one type of discrimination.

This Chapter carries out the principle of the partnership between Britain and India in Indian trade and of reciprocity in the matter. The Governor-General is invested with (a) a special responsibility for securing in the sphere of executive action the purposes which the provisions of this Chapter are designed to secure in relation to legislation, and (b) to prevent action which would subject goods of the United Kingdom or Burmese origin imported into India to discriminatory treatment. (S. 12 (1) (e) & (f); and the Governor with the former responsibility under S. 52 (1) (d); and the manner in which they have to interpret the responsibility in this regard is set out in para. XIII of the Instrument of Instructions for which see Notes to Ss. 12 and 52.

Domiciled in the United Kingdom.—The restriction does not apply to Dominion subjects as against whom discrimination is permissible:

In explaining the section, the *Attorney-General* said:

"The intention of the Section is that a "British subject, by virtue of his being a British subject shall not be exposed to any discrimination. You get that freedom from discrimination in respect of his being a British subject by referring to all those matters which are characteristics of or connected with his status as a British subject. These exhaust the grounds on which a British subject might be made the subject of discrimination. These, place of birth, race, etc., are everything which touches upon his status as a British subject upon which it may be sought to impose discrimination against him".

The discrimination against which this section aims is in respect of the following matters.

(1) Right of entry into India. (2) Travel and residence in India. (3) Acquisition, holding or disposal of property. (4) Holding of public offices. (5) Occupation, trade business or profession. It may be noticed that these are the matters on which Indian subjects are discriminated against in several Colonies and Dominions of the Empire.

The proviso to sub-S. (2) gives effect to the principle of reciprocity on which generally the whole chapter is based. The restrictions and limitations which the Indian Legislature might enact in the event of the United Kingdom imposing any restriction on these matters, are however to be confined to the like restrictions, evidently both as to quantum and character, and on the same subject-matter and with respect to the same subject of distinction. For example, if restriction is imposed on an Indian subject holding a public office on the ground of *place of birth*, a similar restriction as to holding office may be enacted, preventing European born—British subjects from holding the office. In such circumstances, any legislation forbidding European born British subjects from carrying on business or engaging in occupation could not be effectively made.

The reciprocity provision however is far from complete. As stated earlier, the Governor-General and the Governor are invested with a special responsibility to prevent executive action being taken which might have the effect of the kind which it is the purpose of this Chapter to prevent, even though such executive action is not in conflict with any specific provision of the Act; and there is nothing to indicate that the special responsibility would lapse on such executive discrimination in the United Kingdom against Indian Nationals. Nor is the restriction on the powers of the Indian legislatures relaxed in such an event.

Sub-S. (2).—If the Governor-General considered that in any particular case the powers as to quarantine or the right to deport undesirable persons was being used for purposes of discrimination, he can interfere by virtue of his special responsibility enumerated in S. 12 (e) by taking action in exercise of his individual judgment. There is no corresponding provision safeguarding the rights of Indian subjects in the United Kingdom; this flows from the restricted nature of the reciprocity provision as pointed out in the previous paragraph.

Sub-S. (3).—This is designed to protect British subjects against themselves, and is intended to be used for the prevention of communist propaganda.

112. (1) No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.

(3) For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law

and registered thereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.

NOTES.

S. 112.—This section deals with discriminatory taxation of British subject domiciled in the United Kingdom and Burma and of companies incorporated in the United Kingdom and in Burma. There is a corresponding provision against discrimination of Indian subjects and Indian Incorporated Companies, in the Government of Burma Act, S. 46.

Sub-S. (2).—This defines discriminatory taxation.

The restriction imposed by the section applies whether the British subject is resident in British India, or is resident anywhere in the world. Similarly, British Incorporated Companies, trading say in Japan, can claim that they shall not be taxed any more heavily than Indian Companies carrying on business in British India, for example under S. 42 Indian Income-tax Act.

In the case of this section there is no reciprocal provision, conferring a right to Indian Nationals or Companies wherever they might be carrying on business to claim the same treatment as British subjects and Companies in the matter of taxation, by the United Kingdom.

113. (1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock, or bonds, and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—

(a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed; or

(b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants:

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

NOTES.

S. 113.—This section is the counterpart of S. 111 in regard to British Companies, enabling them to carry on business in India, on the same footing as Indian Companies.

Sub-S. (1).—The original bill used the expression “trading in British India” which has now been replaced by “carrying on or proposing to carrying on business in British India” to include shipping companies which it was apprehended would not be included by the original words. In relation to companies, clauses (a) & (b) exhaust all the possible grounds on which any discrimination could be attempted.

The proviso enacts the reciprocal arrangement.

Sub-S. (2).—This sub-section was not in the original Bill and was introduced in the Committee stage to close in a gap of a possible discrimination. S. 112 prevents discrimination by way of taxation on the ground of place of incorporation. But a discrimination might not be based on that ground, but an exemption for taxation might be granted for companies with a particular directorate or on other grounds of discrimination mentioned in sub-S. (1). This sub-section is intended to provide against any such contingency.

114. (1) Subject to the following provisions of this Chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants:

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India.

(2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid.

(3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

NOTES.

S. 114.—S. 113 dealt with companies incorporated in England. This section is intended to enact a like provision with a similar reciprocity provision with regard to companies formed by British subjects domiciled in the United Kingdom but incor-

porated in India. A discrimination against such a company would not fall under S. 113 or S. 111.

In sub-S. (1) the expression 'or proposed to be incorporated' is used to prevent legislation which would prevent the incorporation of the Company: for it cannot claim the rights of a Company until Incorporation.

115. (1) No ship registered in the United Kingdom shall be subjected by or under any Federal or Provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

NOTES.

S. 115.—This section provides against discrimination in respect of Ships on the British Register and contains a reciprocity provision in favour of ships on the Indian Register.

116. (1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor:

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until—

(a) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State; and

(b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State; and

(c) the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

NOTES.

S. 116.—The reciprocal provision is so worded that the disability must attach to the particular trade carried on by an Indian Company in the United Kingdom before a like disability can be imposed in India.

Sub-S. (2).—This carries out the recommendations made by the External Capital Committee of 1925, (principles which are embodied in S. 5 Steel Protection Act, 1924). The section draws a distinction between companies existing on the date on which the Province or Federation passes the enactment by which subsidy is granted and future companies and it is only in the case of the latter that any such condition specified in sub S. (2) can be insisted on.

117. The foregoing provisions of this chapter shall apply in relation to any ordinance, order, bye-law, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law, or of any law of the Federal or any Provincial Legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian law.

NOTES.

S. 117.—This section has been necessitated by the definitions enacted in the Act. Ss. 111 to 116 refer to the provisions of any Provincial or Federal Law. Provincial Law is defined in sub-S. 311 (2) as meaning a law passed by a Provincial Legislature created by this Act. Federal Law is not defined in the Act. 'Existing Law' is defined as the Law in force at the commencement of Part III i.e., April, 1, 1937. If however, under the rule making powers contained in enactments in force, rules are made to achieve the purposes which it is the intention of this Chapter to prevent, they would not seem to be hit at by the invalidating provisions as they cannot be described to be either a Provincial or a Federal Law. This section is devised to meet that lacuna.

118. (1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) An Order in council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

NOTES.

S. 118.—Explaining the principle of the section *Sir S. Hoare*, said.

"The proposal pre-supposed a convention that carries out in the spirit and the letter the provisions which we have been discussing. The Government contemplate that only a convention fully carrying out those safeguards could be regarded as being in substitution for a statutory enactment. The Joint Select Committee came to the view that it was wise to make the alternative of a convention of this kind, for this reason. There was an opinion more than once expressed from the benches of the Indian delegates that, supposing these provisions had been carried out by agreement, they would receive more assent in India than would be the case if there were simply the sanction of a Parliamentary enactment. It was to meet that view that this alternative proposal was made. There was never for us any suggestion of the alternative falling short in any way of the actual statutory provisions. Moreover, there will be the safeguard of Parliamentary sanction, namely, a resolution of both Houses. I should have thought that, with that sanction and with what is expressly set out in the Bill, namely, that the convention must carry out the safeguards set out in the previous provisions, the position was quite satisfactory."

119 (1) No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical qualifications which are to be requisite for any purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The Governor-General or a Governor shall not give his sanction for the purposes of the preceding sub-section unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practising any profession, carrying on any occupation, trade, or business, or holding any office in British India shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India or impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or, as the case may be, the Governor, and, if within two months from the

date of the publication complaint is made to the Governor-General or, as the case may be, the Governor that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well founded, may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this sub-section the expression "regulations" includes rules, bye-laws, orders and ordinances.

In the discharge of his functions under this sub-section the Governor-General or a Governor shall exercise his individual judgment.

(4) If the Governor-General exercising his individual judgment by public notification directs that the provisions of the last preceding sub-section shall apply in relation to any existing Indian law, those provisions shall apply in relation to that law accordingly, and the functions which under those provisions are to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in relation to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them.

NOTES.

S. 119.—This section carries out logically the scheme of S. 111, which prevented the legislature from discriminating against British Subjects of United Kingdom domicile in regard to occupation, profession or trade on the ground of their race, religion, language, place of birth, etc. The scheme of the section is that any law imposing technical qualification for any profession, occupation or trade should receive the previous sanction of the Governor-General.

Sub-S. (2).—This seeks to protect what may be called vested interests in the professions.

120. (1) So long as the condition set out in sub-section (3) of this section continues to be fulfilled; a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing Indian law or any law of the Federal or any Provincial Legislature, be excluded from practising medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless a law of the Federation or of the Province, as the case may be, makes provision for securing—

(a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma; and

(b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding sub-section determine that the diploma

in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in British India and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in sub-section (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.

(4) A medical practitioner entitled to practise or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.

The said modifications are as follows, that is to say,—

(a) sub-section (3) shall not apply and the reference in sub-section (1) to the condition set out therein shall be deemed to be omitted;

(b) any reference in sub-section (2) or sub-section (4) to the United Kingdom shall be construed as a reference to Burma.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

NOTES.

Registrable Qualifications.—Explaining the position regarding the medical profession prior to this Act the Joint Parliamentary Committee stated:—

"The question of the mutual recognition of medical practitioners in the United Kingdom and British India has unapparently become a matter of political controversy in India during the last few years. The Medical Act, 1886, empowers His Majesty by Order in Council to apply the Act to any British possession "which in the opinion of His Majesty affords to the registered medical practitioners of the United Kingdom such privileges of practising in the said British possession. . . . as to His Majesty may seem just" The Act has been applied to British India, in view of the recognition there accorded to practitioners registered in the United Kingdom; and this entitles any person who holds an Indian medical diploma recognised for the time being by the General Medical Council as "furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of Medicine, Surgery and Midwifery" to be registered on application in the United Kingdom Medical Register. The Act also provides that, where the General Medical Council have refused to recognize a medical diploma for this purpose, the Privy Council, on application being made to them, may, if they think fit, after considering the application and after communication with the General Medical Council, order the latter to recognize the diploma and the Council are thereupon under a statutory obligation to do so. It will thus be seen that, though the Act is based upon the principle of reciprocity, the General Medical Council is not compelled to give an automatic recognition to such and every diploma conferred in the other countries to which the Act applies, but is entitled subject to an appeal to the Privy Council, to satisfy itself that any particular diploma is such as to furnish a sufficient guarantee of the possession of the requisite medical knowledge and skill. In countries where there is some central authority corresponding to the General Medical Council, the Council is accustomed to consult that body for the purpose of satisfying itself that a particular diploma about which perhaps a question has been raised affords the guarantee required; but where such body does not exist, the Council must of course make its own inquiries. The General Medical Council in the United Kingdom does not itself confer medical degrees. It keeps the Medical Register; that is to say, a register of Medical practitioners who have passed a qualifying examination in medicine surgery and midwifery, held by Universities in the United Kingdom and certain other bodies, in which a standard of proficiency satisfactory to the Council has been attained; and the Council, though they do not themselves examine, are thus able in effect to secure that the qualifying examinations and the standard of proficiency are adequate.

"Until very recently there was no central body in India corresponding to the General Medical Council, and therefore no authority with power to secure and maintain a common standard for the medical qualifications evidenced by the diplomas recognized by the various provincial Medical Councils in India. It appears that there was in consequence a considerable variation in the standards adopted by these bodies, and the Council some four years ago took the drastic step of refusing any longer to accord recognition to Indian Medical Diplomas, as the Indian Legislature had refused to provide the money for a system of inspection which would have been acceptable to the General Medical Council pending the establishment of a system of inspection by an All-India Medical Council. It is perhaps not surprising that the action of the Council caused resentment and protest. The controversy has had, at any rate, one satisfactory result for the Indian Legislature have now passed an Act known as the Indian Medical Council Act, 1933, which sets up a Medical Council for the whole of British India with substantially the same functions as those of the General Medical Council in the United Kingdom. This Act sets out in the First Schedule the medical qualifications granted by Medical Institutions in British India, which are to be recognised for the purposes of the Act, and gives the Council power to secure by inspection and, in the last resort, by the withdrawal of recognition, an adequate standard of proficiency. In the Second Schedule are set out the medical qualifications granted by Medical Institutions outside British India which are to be recognized for the purposes of the Act, and in this list are included the registrable qualifications granted by licensing bodies in the United Kingdom which admit to the United Kingdom Medical Register.

These are to continue unaltered for a period of four years, but the Council are empowered to enter into negotiations with the authority in any country outside British India entrusted with the maintenance of a register of Medical Practitioners for the settlement of a scheme for the reciprocal recognition of medical qualifications. The Governor-General is to be informed of the decisions of the Council to recognise or refuse to recognise the medical qualifications proposed by the authority abroad for recognition in British India; and he is to frame a new Schedule (to become effective four years after the commencement of the Act) which will comprise the medical qualifications thereafter to be recognised. Provision is also made enabling the Governor-General in Council after the expiration of four years to amend the Schedule and to add further qualification or to recognise only qualifications granted before or after a specified date. Thus the Governor-General in Council would, on the representations of the Indian Medical Council, be free to withdraw at any time after the expiration of four years the recognition in British India secured to Medical Practitioners on the United Kingdom Medical Register, though there is a saving for all Medical qualifications granted previously. (J.P.C. Rep. Paras. 361, 362 & 363).

121. A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.

S. 121. — This section is absolute and is not section. The reason for the special rule in their case is thus stated by the Joint Parliamentary Committee:

"It is not necessary to emphasise the importance of the Indian Medical Service from the Military point of view; and in our opinion the members of the Service ought, by virtue of the Commissions which they hold, to be deemed to possess all necessary statutory qualifications entitling them to practice. The same principle should apply to members of the Royal Army Medical Corps and of the Royal Air Force Medical Service. (J.P.C. Rep. para. 365).

Certain other Restrictions.—There are a few further restrictions on Legislative powers which arise under others sections—Ss. 297, 298, 299, for which see Notes to

PART VI

Administrative Relations between Federation, Provinces and States.

General.

122. (1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

Obligation of units and Federation.

(2) The reference in subsection (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

NOTES.

S. 122: Relations between Federation and units.—"The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. The Provincial Governments are at the present time subordinate to the Central Government and under a statutory obligation to obey its orders and directions, though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the Provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred Provincial sphere. But now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and its constituent units."

"The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and, subject to such reservations as may be contained in the Ruler's Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of these laws may be vested in the Federation itself and in Federal Officers, subject, in the case of the States, to the terms of the Ruler's Instrument of Accession, or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the Law on behalf of the Federal Government. The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province. This, as we read it, is a statement of the constitutional duty of every Province in relation to Federal Laws, which has no sanction behind it other than the moral obligation which must always rest upon the constituent units of a Federation to give effect to the laws of the political organism of which they form a part. But, in addition to this general statement of a moral obligation, the White Paper proposes to empower the Federal Government to give directions to a Provincial Government for the purpose of securing that due effect is given in the Province to any such law, and that the manner in which the Provincial Government's executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government. In the case of the States, it is proposed that the Ruler—should accept the same general moral obligation, which, as we have said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory. But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the Federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself." (J.P.C. Rep. paras. 218-9).

Any law enacted by the Federal Legislature, unless there is anything to the contrary in that enactment, is in force over the whole of British India, and in every State which has ceded to the Federation power to legislate on that particular subject-matter.

There is no Federal Judiciary as such exclusively to enforce Federal Laws, and there is no complete Federal executive machinery for the execution of such legislation: but the Federation, except in particular departments, will have to depend on Provincial machinery for the administration and enforcement of such laws. In such circumstances the administrative relations between the Federation and the Provinces present difficult problems.

Co-operation between the Centre and the Units.—"The structure of this Federation and, indeed, of every Federation in the world depends upon goodwill. Nowhere in the world that I know of, is there any sanction under which the Federal Centre can compel the Unit to act against the will of the Unit, but we have to assume that the Units are going to attempt to carry out their duties under the Act, in good faith. We also have to remember that the Federal Government itself will be composed of representatives of the Unit, and the Federal Legislature will be a legislature elected so far as both its Chambers are concerned by the Provincial Councils and the Federated States. That being so, there is the closest possible connection between the Units and

the Centre and that in itself should make for co-operation and good will." *Parl. Deb. Vol. 299, Cols. 2144-45*. [N. B.—Now only the Federal Assembly is elected by the Provincial Assemblies, the Council of State being directly elected by territorial 'constituencies'.]

S. 122 lays down a moral obligation on the Provinces and the Federation to see that the exercise of the powers of each is not impeded and that each should have regard for the interests of the other in the matter of the exercise of its own powers; while the actual enforcement is dealt with by S. 126 and 128.

It is one of the terms of the conditions of the entry of the Indian States into the Federation that the Instrument of Accession should specify that thereby the Ruler "assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession:" S. 6 (1) (b).

The Instrument of Instructions, to the Governor-General provides as follows:—Para. VIII. "Whereas it is expedient for the common good of British India that the authority of Our Governor-General in Council and of the Indian Legislature in those matters which are by law assigned to them should prevail:

"And whereas at the same time it is the purpose of the Act that the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policy:

"And whereas in the interest of the harmonious co-operation of the several members of the body politic, the Act has empowered Our Governor-General to exercise, at his discretion, certain powers affecting the relations between his Government and the Provinces:

"It is Our will and pleasure that our Governor-General in the exercise of these powers should give unbiased consideration as well to the views of the Governments of the Provinces as to those of his own Government whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province for the purpose of securing that the executive authority of the Governor-General in Council is not impeded or prejudiced, or his power to determine whether Provincial Law or Central Law shall regulate a matter to determine whether Provincial Law or Central Law shall regulate a matter in the sphere in which both Legislatures have power to make laws."

Broadly speaking, Executive power is co-extensive with Legislative power. This can be true only in the fields of exclusive Legislative power. In the field covered by the Concurrent Legislative list, the executive power is vested in the Provinces, and not in the Federation. Though by reason of S. 107 Federal Legislation supersedes Provincial in the concurrent field, power to legislate does not carry with it Executive power.

But even in this field it is possible for Federal Executive power to be exercised in relation to a Province. For this purpose the subjects in the Concurrent list are divided into two classes. In regard to the subjects falling under the first class, the Federation has in relation to Provinces, no Executive power, or power to give directions to the Provincial executive; but in relation to subjects in the 2nd part, the Federal executive may obtain the power if Federal Legislation so provides, and for such Legislation to be introduced the previous consent of the Governor-General has to be obtained. S. 126.

Governor-General may require Governors to discharge certain functions as his agents.

123. (1) The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

(2) If in any particular case it appears to the Governor-General necessary or convenient so to do, he may direct the Governor of any Province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(3) In the discharge of any such functions the Governor shall act in his discretion.

NOTES.

S. 123.—The matters dealt with in this section are those which relate to the reserved departments, (S. 11 (1) *supra*); and reproduce in effect the provisions of the Government of India Act, 1919. By S. 43-A (1) (c) of that Act, rules might be made for the use, under the authority of the Governor-General in Council, for the Agency of Local Governments in relation to Central Subjects, in so far as such Agency may be found convenient and for determining the financial condition of such Agency and by the Rules framed under that provision it was provided:

Rule 46. The Governor-General in Council may employ the Agency of the Governor in Council of any Province in the administration of Central subjects in so far as such agency may be found convenient.

46-A. Where, in respect of the central subject, powers have been conferred by or under any law upon a local Government such powers shall be exercised by the Governor in Council.

47. The cost of an establishment employed by the Governor in Council of any Province exclusively on the administration of central subjects shall be a charge against All-India revenues.

48. If a joint establishment is employed upon the administration of central and provincial subjects, the cost of such establishment may be distributed in such manner as the Governor-General in Council and the Governor in Council of the Province concerned may agree, or in the case of disagreement, in such manner as may be determined by the Secretary in Council.

There is however, under this Act no provision for financial adjustment between the Federation and the Provinces in such cases. Cf., S. 124 (4) and S. 156 for other cases.

The Governor when acting in the exercise of Agency functions has a special responsibility for securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter". S. 52 (2).

124. (1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

Power of Federation to confer powers, etc., on Provinces and States in certain cases

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

NOTES.

S. 124: Scope.—The previous section dealt with the Reserved Departments in the Federal field. This section relates to the "Transferred" departments in that field to borrow the language of the Government of India Act, 1919. Under the previous section the Governor acting in his discretion is constituted the Agent for the administration of

those departments. Under this section the Provincial Government, i.e., the Provincial Ministers are utilised as the agency for the administration of the Federal Law in question. In the case of the Governor he is subordinate to the Governor-General and bound to carry out his orders. (S. 54). Therefore there is no question of his consent being obtained to the devolution of functions on him; but under the scheme of Provincial Autonomy, the Provincial Governments or Ministers are not subordinate to the Federation, but are bodies with co-equal powers, though the sphere of their functions and the fields of their activity are different. Hence the consent of the Provincial Governments and of the Rulers, is requisite before a Federal Law is left to be administered by them. When such a devolution takes place, the executive authority of the Province is enlarged to the extent of the delegation. S.O.S. (2).

Before passing, it is necessary to reiterate that in regard to a Province the executive authority of the Federation extends in respect of the matters comprised in the Federal List, whether there be actual legislation on the subject or not, that is to say, the executive power is dependent on legislative competency alone. The same is not true of the Federating States. In their case, as already noticed, by virtue of S. 8 (2), executive authority is dependent on the existence on the Statute book of a valid legislative enactment extending to that State.

The distinction between the scope of sub-S. (1) and that of sub-S. (2) and (3) may now be considered. Sub-S. (1) applies to the exercise of the executive power of the Federation which is not based or dependent on any specific Federal Legislative provision; while sub-Ss. (2) and (3) relate to the utilisation of the administrative machinery of the 'Units' for the enforcement of Federal Law.

The scope of sub-S. (1) is determined by the extent of the executive power of the Federation under S. 8 (1), i.e., in the case of the Provinces it extends to all matters in the Federal Legislative List, and in the case of the States, to matters in respect of the subjects over which under the Instrument of Accession it has power to make laws. By virtue of the opening words "Notwithstanding anything in this Act," the limitation on the executive power under sub-S. (2) of S. 8 is excluded with the result that with the consent of a ruler the executive power of the Federation subject to the limitations in the proviso to S. 8 (1) may be extended into a State, without Federal legislation therefor.

As sub-Ss. (2) and (3) posit the existence of Federal Law applicable to the 'Units' in question, the vesting of powers and duties under these sub-sections are not dependent on the consent of the units.

Sub-S. (2).—In Australia it has been held in *Commonwealth v. N. S. Wales*, (33 Com. L.R. 1) that there is no power in the Commonwealth Legislature to impose duties upon Provincial officials and this had led to considerable administrative inconvenience which this section would obviate.

Whereas in the case of the Provinces over which executive authority of the Federation is absolute (subject to the terms of sub-S. 3 of S. 122) so as to permit the Federation to impose duties and obligation on officers designated at the discretion of the Federation, in the case of the States, though by S. 6 (1) (b) the ruler assumes the obligation to ensure due effect being given to Federal Laws, the ruler of the State may designate the officers, on whom alone the duties may be imposed.

125. (1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Govern-

ment and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

NOTES.

S. 125.—Under the terms of S. 6 (1) (a) the accession of a State is to the "Federation as established by this Act" and "the Governor-General of India and any other Federal authority shall by virtue of this accession exercise in relation to the State such functions as may be vested on them by or under this Act." This section is one of the instances where the States are permitted, so to speak, to contract out of the Act. (S. 134 furnishes another instance).

"S. 125 deals with the administration of Federal Acts in Indian States. But for this section the administrative powers of the Federal Executive would apply completely in respect of any subject which had been acceded to.

"In the ordinary case a State, by acceding say to 10 subjects, will accede in respect of them not only of the Legislative Powers, but of the administrative powers of the Federation in relation thereto. S. 125 is intended to meet the special case of some of the larger States, with an efficient administration which puts forward the suggestion that it might itself be allowed to administer one or more subjects in respect of which it accedes. S. 125 says that such an agreement may be made, but if it is made, then the Governor-General is given a special power of inspection. (*Parl. Deb.* Vol. 298, Col. 1086).

"Suppose a State, having acceded to the Federation, and having accepted a particular Federal subject, is allowed, for special reasons, to administer that subject itself, what power is given to the Federation if that federal subject is not being effectively administered? The answer is two-fold. First of all, the Federal Executive and the Federal Legislature would have the right, and indeed the duty, to follow very closely what is happening with that service. Suppose it appeared that the service was not being effectively administered and intervention was then necessary. The intervention would come from the Governor-General for this reason. The Joint Select Committee came to the view, not only in this case, but in cases also affecting the Federal Government and the Provinces where intervention was necessary, that intervention had better come from the Governor-General, although acting, of course, in the closest contact with the Federal Government, rather than from the Federal Government itself.

"The Hon. Member will see the kind of difficulty we wish to avoid. We wish to avoid the difficulty of the Governor-General on the advice of his Federal Ministers instructing a Provincial Governor or the Sovereign of a State to take action against his own Ministers. We thought that that kind of situation would be objectionable from various points of view. That being so, intervention of that kind had better not come from the Governor-General on the advice of his Federal Ministers.

"But that does not mean that the Governor-General would not be in the closest possible touch with his Federal Ministers and that the Federal Ministers would not be closely following the matter."

Mr. Morgan Jones. "Suppose in State A or State B there is a suspicion of inefficient administration. Would it be possible in the Central Legislature of a discussion to arise concerning that lack of efficient administration?"

Sir Samuel Hoare. "I feel sure that the Federal Legislature would be able to discuss matters in connection with any service that the Princes had accepted as a Federal Service. Quite obviously the Federal Legislature in a matter of that kind would have the duty to discuss it." *Parl. Deb.* Vol. 298, Cols. 1148-49.

The obligation to reimburse the "unit" in respect of the expenses of administration of Federal Laws, or of the exercise of Federal executive power therein provided for in S. 124 (4) is in terms confined to the devolution under that section. S. 125 however makes no such provision and it would therefore seem that in cases where a State assumes the obligations under the agreements specified herein, it would have to bear the financial obligation involved thereby.

126. (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

Control of Federation over Province in certain cases.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance:

Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

NOTES.

S. 126. Extent of Executive power of the Federation in Provinces.—This section deals with the exercise of the Executive power of the Federation in the Provinces. Under the terms of S. 8 (1) the Executive power of the Federation extends to all matters within the competence of the Federal Legislature but by reason of the proviso to the sub-section it does not extend in a Province in respect of matters over which the Provincial Legislature has power to make laws. Thus notwithstanding the fact that the Federal Legislature has power to make laws in respect of matters falling within the concurrent list and that by reason of S. 107 the Federal Legislature has normally predominance in that field, it is to the Provincial executive that the Federation has mainly to look to for the administration of such laws. In its exclusive field, the Federal Government has power to give directions, detailed and specific if need be, to a Provincial Government. The same principle would apply to matters in which action or inaction by a Provincial Government within its own exclusive sphere affects the administration of an exclusively Federal subject, i.e., it is within the power of a Federal Government to give directions to a Province which is carrying on the administration of the Province in a manner prejudicially affecting the efficiency of a Federal subject.

The general rule is that the Executive power of the Province extends to all matters over which the Provincial Legislature has power to make laws; and that the Federal Executive power does not extend in a Province to matters over which the Provincial Legislature has power to make Laws (S. 8 (1) Proviso and S. 49 (2).)

The effect of this is that in respect of matters comprised in the concurrent list Executive power is vested in the Province. The reason for this rule has been thus stated by the Joint Parliamentary Committee.

"The objects of legislation in this field will be predominantly matters of Provincial concern, and the agency by which such legislation will be administered will be almost exclusively a Provincial agency. The Federal Legislature will be generally used as an instrument of legislation in this field merely from consideration of practical convenience and, if this procedure were to carry with it automatically an extension of the scope of Federal Administration, the Provinces might feel that they were exposed to dangerous encroachment."

In cases however in which the Federal Legislature is used as a means of securing uniformity in matters of social legislation, uniformity of legislation will be useless unless there is a means of enforcing reasonable uniformity of administration.

"We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts or of the Provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the Provinces. In these matters therefore, we think that the Federal Government should have in law, as they could have in practice no powers of administrative control. The other class of concurrent subjects consists mainly of the regulation of mines, factories, employer's liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films. In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question. In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of Provincial opinion will sanction any unreasonable encroachment upon the Provincial field of action; but, as a further safeguard against such encroachment, we think that any clause in a statute conferring such powers should require the previous sanction of the Governor-General." (J.P.C. Report, para. 220).

In accordance with this recommendation, the concurrent list is divided into two parts and the latter classes of subjects are included in the second class. This class forms an exception to the rule stated at the outset that the Federal Executive power does not extend in a Province to matters on which the Provincial Legislature has power to make laws.

In respect of matters in the second part of List III, the Federal Executive power may be exercised only in pursuance of a Federal Law which expressly empowers such exercise; and for the introduction of a Bill containing such a clause the previous consent of the Governor-General is necessary.

Sub S. (3).—This reproduces the provision contained in Rule 12-A of the Delegation rules under S. 15-A of the Government of India Act, 1919.

Being a matter in the department of defence the authority to give the direction would be the Governor-General acting in his discretion.

Sub-S. (4).—The original directions under S. 126 (1) may presumably have been given in a field of Ministerial responsibility. But nevertheless when the directions have to be enforced, the Governor-General acts in his discretion, i.e., beyond the field of Ministerial responsibility and control. The reason is explained by the Joint Parliamentary Committee in para. 221:

"Among the special responsibilities of the Governor of a Province is one 'for securing the execution of orders lawfully issued by the Governor-General'; and, since the directions of which we have spoken would be lawful orders of the Governor-General, it would become the duty of the Governor to secure their execution in opposition to the policy, and (it must necessarily follow) to the advice, of his Ministers. We

do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to overrule his own Ministers at the instance of Federal Ministers; and, where a conflict of this kind arises between the Federal Government and the Government of a Province, any directions by the Governor-General which require the Governor to dissent from, or to overrule, the Provincial Ministry ought to be given in the Governor-General's discretion. The Governor-General would thus become the arbiter between the Federal and the Provincial Governments, and we think that disputes between the two are far more likely to be settled amably by the Governor-General's discretionary intervention. It cannot be assumed that the fault in cases of this kind will always lie with the Province; the Federal Government may have been tactless or unwise; and the Governor-General should not be under any constitutional obligation to take action against his better judgment, if the effect would only be to accentuate or embitter the dispute."

Sub-S. (5): Direction for preservation of peace and tranquillity—"The White Paper proposed to empower the Governor-General in his discretion to issue instructions to the Governor of a Province as to the manner in which the executive power and authority in the Province is to be exercised for the purpose of preventing and any grave menace to the peace and tranquillity of India or any part thereof. It has been suggested that, in view of the special responsibility of the Governor to which we have referred above, this proposal is superfluous. We do not think that it is. The Governor of a Province is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province, and we think that, but for the proposal to which we have referred, his special responsibility for securing the execution of orders lawfully issued by the Governor-General would necessarily be read as referring to the execution of orders issued by the Governor-General within the sphere of the Governor's statutory functions. But, to take one example which occurs to us, a conspiracy in one Province to disturb the peace and tranquillity of another might well be outside the Governor's special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province; and, since we have no doubt that an ultimate and residuary responsibility for the peace and tranquillity of the whole of India must vest in the Governor-General, it is plain that the latter's power to give directions to a Governor should be wide enough to cover this case, and that it should be obligatory on a Governor to give effect to those directions, even though it is the peace of a neighbouring Province and not his own which is endangered." (J.P.C. Rep. para. 222).

127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

NOTES.

S. 127.—Unlike the case of Federal Executive power, the acquisition of land by the Federation may be in respect of a matter within the Federal list or the concurrent list.

The land thus acquired by the Federation, becomes thereupon subject to Federal Legislation under Item 10 of List I. It will however be seen that such land is not within the exclusive power of the Federal Legislature (as under S. 52 of the Australian Constitution) but is subject to the concurrent legislation of the Province and the Federation, with an overriding provision in favour of the latter. See however item (2) of the Federal List.

128. (1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

Duty of Ruler of a State as respects Federal subjects.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

NOTES.

S. 128: Scope.—S. 126 related to the exercise of the Federal Executive power in the Provinces, and this deals with the same matter in relation to the Federating States.

S. 8 (2) provides for the continuance "of the executive authority of the Ruler of a Federated State with respect to matters on which the Federal Legislature has power to make laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law".

"The words ('by virtue of a law of the Federal Legislature which applies therein') are put in to make it plain that the Federation cannot give directions to a State on the ground that the way in which its executive authority is being exercised impedes or prejudices the executive authority of the Federation, unless the matter in respect of which the impediment is said to occur relates to a specific Federal Act. To put it in another way, it is not to be within the power of the Federation to give a direction to a Federated State on this ground of impediment merely because the subject-matter is one of the matters contained in the Federal Legislative List; there must be a specific Federal Act in respect of which the impediment is said to arise."

Sub S. (2).—"The proviso is to make it plain that the Federal Government has a legal right to claim executive authority in the State. Therefore, the proviso is to the effect, that, if any question arises under the section, the question may, at the instance of either the Federation or the Ruler, be referred to the Federal Court for determination. That would enable the issue as to whether it is a matter in respect of which the Federation may give directions to be decided by the Federal Court". (*Parl. Deb.* Vol. 302, Col. 877).

This proviso was not in the original Bill but was added as a result of the representation made by the Princes in February, 1935.

In regard to the exercise of Federal Executive power there are a few points of distinction as between the case of the States and that of the Provinces.

1. In the case of the Provinces, legal competence, not the actual existence of legislation, determines the existence of Executive power. But in the case of the States, there must be a Federal Law applicable to that State in existence before the Federal Executive power can arise. S. 8 (2).

2. While in the case of Provinces, the existence of the power depends on its falling in the Federal List or in the 2nd part of the Concurrent List, in the case of the States the only question that can arise is—is it a subject matter in respect of which the State in question has ceded to the Federation the power to make laws?

3. Whereas in the case of the Provinces, it would appear that the Governor-General is the final authority to determine whether directions could be given; in the case of the States an appeal is provided to the Federal Court for determining whether the matter is one within the Executive power of the Federation or not.

Broadcasting.

129. (1) The Federal Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler—

- (a) to construct and use transmitters in the Province or State;
 (b) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State:

Provided that nothing in this sub-section shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion.

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment.

NOTES.

S. 129.—In the *Regulation and Control of Radio Communication in Canada*, In re, (1932 A.C. 304) the Privy Council held that under the Canadian Constitution the subject of Broadcasting fell under the domain of the Federal Parliament for the reasons (1) that the matter was comprehended within "Telegraph services" an enumerated subject within exclusive Dominion competence under S. 91; and (2) that by virtue of the power to implement treaties under S. 132, the Legislation of the Dominion was valid as implementing the Radio Convention to which Canada was a party. See further notes to S. 106 *supra*.

Under this Act, Wireless Broadcasting is specially enumerated as an exclusively Federal subject in item 7 of List I. Explaining this allocation and the concessions made to the Provinces by this section, Sir S. Hoare said:

"I think everybody whom we have consulted has agreed that it should be a Federal subject and that wave lengths and so on should be under the control of the Federation but obviously in India the Provinces must have considerable latitude as to their programmes. The suggestion was made to us that it would be possible to have division between the kind of broadcasting that the Federal Government might

undertake and the kind of broadcasting that the Federal units might undertake, but the further we went into an examination of that question the more impossible we found it to make any cut-and-dried provision of that kind. We therefore came to the conclusion that the arrangement should be, first, that the subject of broadcasting should be a Federal subject, that the bigger questions of policy should be controlled by the Federation, that the greatest possible latitude should be allowed to the Units as to their local programme and that the Governor-General in his discretion should hold the balance between the two and ensure that the Federation was not withholding unreasonably licences and facilities from the Provinces or the Federal Units." (*Parl. Deb. Vol. 299, Col. 2148*).

The reasonableness of the conditions imposed by the Federal Government is for the Governor-General to decide and is not a matter that can be litigated in Courts.

Interference with Water Supplies.

130. If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General.

NOTES.

S. 130: Water Supply.—"The Government of India has always possessed what may be called a common law right to use and control in the public interest the water supplies of the country, and a similar right has been asserted by the legislation of more than one Province, as regards the water supplies of the Province. "Water supplies" is now a Provincial subject for legislation and administration, but the Central Legislature may also legislate upon it 'with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory'. Its administration in a Province is reserved to the Governor in Council, and is therefore under the ultimate control of the Secretary of State, with whom the final decision rests when claims or disputes arise between one Provincial Government and another, or between a Province and a State. This control of the Secretary of State obviously could not continue under the new Constitution, but it seems to us impossible to dispense altogether with a central authority of some kind. (J.P.C. Rep. para. 224).

The *Attorney-General* said: "This section deals with a fascinating subject, that is, what rights people have in water, running water in particular, as well as water in natural reservoirs. There are two kinds of water. There is the water in the natural streams and reservoirs, and there is the water in the canals. As far as the waters in the natural streams and reservoirs are concerned there is no (*sic*) statute or common law in India which regulates the rights of people to the use of the water. In this country there is a great body of common law, which is added to by judicial decisions, which regulates the rights of people through whose land the water flows, the riparian owners, and which also deals with the rights of people who use the stream and who have a right to expect it to continue in its natural flow so that their cattle may continue to drink from it. In India there is no such statute or common law, and therefore, these natural resources of water supplies have been dealt with in a general way and on certain broad lines. That is to say, an area which has a very small rainfall, or no rainfall at all, gets a prior right to the water as compared with those which have a plentiful rainfall. A non-cultivated area will not be preferred to a cultivated area which is in possession of an irrigation supply or a natural supply of water.

"These are the general principles which regulate the use of water in these natural conditions, but they are not what lawyers call "justiciable rights" which can be taken to a Court of law. When you come to canals it is a different matter. A canal is built by powers conferred by local legislation, or constructed in accordance with agreements which are often based upon a proportion of the cost which falls on the different parties entitled to the use of the water. Those are justiciable rights, and can be taken to a Court of Law. This section and the following section are intended to provide a method of settling rights in natural sources, rights which cannot be taken to a Court of Law because there are no legal principles by which the Courts can regulate any disputes which may arise. For that reason it is not proposed to put canals into the Clause because they can be disposed of by ordinary tribunals and do not require to be referred to the special tribunals which are set up." (*Parl. Deb.* Vol. 299, Cols. 2149-50).

The right to make a complaint does not extend to a case where one Unit is desirous of securing the right to make use of water supplies in the territory of another Unit, but applies only to the case of a Unit using water to the detriment of another.

131. (1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the Court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper.

Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of

any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section:

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

132. If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or Federated State have been or are likely to be affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.

NOTES.

S. 132.—S. 130 is confined to complaints at the instance of Governors of Provinces and of Rulers of Federated States. The parties complained against might be any other "unit" of the Federation. S. 132 deals with the case of complaints of the Chief Commissioner's Provinces, against other Units. They are separately treated because Chief Commissioner's Provinces are under the Administrative control of the Federal Government.

133. Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor-General.

NOTES.

S. 133: Exclusion of Jurisdiction of Courts.—Even in cases where a dispute in respect of water supply involves "a question on which the existence or extent of a legal right depends" within the meaning of S. 204, the Jurisdiction of the Federal Court is excluded in respect of water from

natural sources. If however the dispute is one in regard to water from other than a natural source of supply, i.e., from an artificial source, the jurisdiction of the Courts, including the Federal Court is unaffected. The question as to whether a source of water supply is natural or other than natural might not always be simple of solution. It is difficult in some cases to determine whether a stream is natural or artificial, as many natural streams have been so altered for manufacturing or for other purposes that they have to all appearances entirely lost their natural course and character and many artificial streams have been made under such circumstances or have existed for so long that they have attained every characteristic of natural streams—see for example *Bailey and Co. v. Clark*, (1902) 1 Ch. 649. Accordingly it is a matter for judicial determination depending on the facts of each case, and no accurate definition can be attempted to meet every case.

In such circumstances it is submitted that it must be for the Federal or other Court if a suit or dispute is brought before it to consider and consider finally whether the stream or other source of supply is natural so as to oust the jurisdiction of the Court. It is not within the competence of the Governor-General to finally decide facts necessary to give himself jurisdiction. The decision as to the character of the source of supply can be canvassed before the Federal Court. In this connection the limited nature of the original Jurisdiction of the Federal Court as regards disputes to which the States are parties should be borne in mind.

134. The provisions contained in this Part of this Act with respect to Ruler of State may exclude application of provisions as to water supply. interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.

NOTES.

S. 134.—“Clauses 129 to 131 were inserted in the Bill as it was thought they were much in the interests of the States, while preserving the overriding powers of the Governor-General in certain circumstances and yet providing for the settlement of disputes where, there might be an undesirable use of water rights, but the Princes in the Memorandum of the 27th February to the Viceroy, which is printed in the White Paper, rather objected to the machinery of Cl. 131, because it allowed reference to an *ad hoc* tribunal of complaints made by a Ruler as being somehow or other against their interests.

“In order to meet that point, we allow them to put themselves in the same position as an unfederated State; that is to say, they would come under the same powers as those which I thought it was agreed on all hands have been used in the best way for safeguarding the water rights of the mass of the people.” (*Parl. Deb.* Vol. 300 Cols. 1422).

This is one of the few cases where States have been permitted to contract out of the provisions of the Act. It is very improbable that any State will desire to contract out, as the alternative would be to bring into play the paramountcy control in so far as control might be necessary.

Inter-Provincial Co-operation.

135. If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

Provisions with respect to an Inter-Provincial Council.

(a) inquiring into and advising upon disputes which may have arisen between Provinces;

(b) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council:

NOTES.

S. 135.—With the disappearance of a Central Government with power to legislate for more Provinces than one in matters of common concern, and with the conferment of Provincial Autonomy with the centrifugal forces that it inevitably generates, the need was felt for a machinery to resolve inter-provincial disputes and for co-ordinating provincial activities in the field of research. The provision made for vesting the centre with power to legislate on provincial topics, by consent of the provinces has already been noticed. (Vide S. 103.)

It is to these Councils that one must look to for removing the acerbities of inter-provincial feeling, and to supply that factor of cohesion which a unitary constitution alone can give.

PART VII.

Finance, Property, Contracts and Suits.

CHAPTER I.

FINANCE.

Distribution of Revenues between the Federation and the Federal Units.

136. Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway Authority, the expression "revenues of the Federation" includes all revenues and public moneys raised or received by the Federation, and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province.

NOTES.

S. 136.—This section defines the expressions 'Revenues of the Federation' and 'Revenues of the Province' as including all revenues and monies raised or received by the Federation or Province, notwithstanding in the case of the Federation certain taxes are levied and collected by it though the nett proceeds thereof are wholly paid over to the Provinces in such manner as may be prescribed. The following tables indicate the sources of Federal and Provincial Revenue, their collection and ultimate destination.

REVENUES OF THE FEDERATION.

(1)	(2)	(3)	(4)
From Taxes.	From commercial operations.	Sovereign Functions	Contribution from States—Assigned by His Majesty
1. Posts and Telegraph.	1. Comage and currency.	1. Comage and currency.	Tributes and other payments.
2. Federal Railways.	2. Escheat and lapse in areas administered by Federal Government.	2. Escheat and lapse in areas administered by Federal Government.	
3. Banking.	C. Levied and collected by Federation and, belonging wholly to the Federation.		
4. Other commercial operations	1. Taxes in Lists A & B in areas administered by the Federal Government.		
	2. Customs.		
	3. Corporation Tax.		
	4. Surcharges mentioned in Lists A & B.		
	5. Taxes on capital values of asset of individuals and companies.		
	6. Miscellaneous receipts from fees in respect of matters in Federal List (including fees taken in the Federal Court).		

REVENUES OF THE PROVINCE.

A. By Taxes.	L. Commercial Operations.	C. Sovereign Rights.
A. Directly raised by the Province.	C. Levied and Collected by the Federation but which is or may be allocated in part to the Province.	Escheat and Lapse.
1. Land Revenue.		
2. Duties of excise on alcoholic liquors etc., excluded from Federal revenues.	Items in List A of the other Table.	
3. Taxes on Agricultural income.		
4. Taxes on lands and Buildings, ¹ Hearths and Windows.	A. By the Government of India Act. Income-Tax. Export Duty on Jute.	B. By Federal Legislation. Salt. Federal Excise duty. Export Duties.
5. Succession to agricultural land.		
6. Taxes on mineral rights.		
7. Capitalisation taxes.		
8. Taxes on Professions, Arts, Trades and callings ¹ .		
9. Animals and Boats ¹ .		
10. Sale of Goods and advertisements.		
11. Octroi.		
12. Taxes on luxuries, entertainments, etc. ¹ .		
13. Stamps—other than Stamps in Federal list.		
14. Taxes on Passengers and Goods in inland water ways.		
15. Tolls ¹ .		
16. Miscellaneous Receipts from fees including fees taken in Courts (other than the Federal Court).		

¹ These Taxes are now raised by Municipal and other Local Authorities for their needs.² Now abolished—but before abolition was a source of Municipal Taxation.

137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioner's Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature:

Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights.

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

NOTES.

S. 137: Sources of Provincial Revenue in Federal List.—The taxes referred to in this section are really sources of Provincial Revenue but they have been assigned to the Federal List to render them leviable by Federal Law, as it was desired that there should be uniformity of law for their levy, incidence and collection and to enable the Federation to levy surcharges for Federal purposes, if necessary. The share attributable to the Chief Commissioner's Provinces are credited to the Revenues of the Federation, as these areas are really parts of Federal Territory.

These taxes need not be levied in all the units of the Federation but may be levied in particular units only,—but as the nett proceeds of the tax are to be enjoyed by the units it does not offend any principle of equality between the units of the Federation.

The mode of ascertaining the nett proceeds is set out in S. 144.

Duties in respect of succession to property other than agricultural land.—In relation to this tax a question of some importance is raised by the levy of fees on Probate under the Indian Court Fees Act; is the Court fee levied in respect of Probate and Letters of Administration under Art. 11 of the Court Fees Act, a duty of the kind specified in this section?

Three views seem possible. (1) The amount payable is a 'fee taken in a Court' within Item 1, of the Provincial List. (2) As the mode in which the fees are collected is by means of stamps under S. 25, Court Fees Act, the receipt in question is a "Stamp" falling within Item 51 of the Provincial List. (3) It is a succession duty within the meaning of this section.

It is submitted that regard must be had to the general scheme of the Schedules and the terminology employed therein to determine the class under which this particular head of subject would fall. Taking into consideration the intention as disclosed by Item 13 of the concurrent list part I, a judicial stamp would not seem to be a fee taken in a Court. As between the two other alternatives, regard should be had more to the substance than to the form of the levy. It might be that a tax is not the less a duty on succession, because it is collected by means of a stamp; but it would be contrary to all sound canons of construction to call that a tax or duty on succession which is not leviable on all cases of succession, but is confined to those where a party is desirous or under necessity to obtain Probate or Letters of administration. In essence and substance therefore it would seem to be a 'stamp duty' within the meaning of Item 51 of the Provincial List.

138. (1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year

Taxes on income.

of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces, and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed :

Provided that—

(a) the percentage originally prescribed under this sub-section shall not be increased by any subsequent Order in Council ;

(b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding sub-section, the Federation may retain out of the moneys assigned by that sub-section to Provinces and States—

(a) in each year of a prescribed period such sum as may be prescribed ; and

(b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each annual reduction :

Provided that—

(i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council,

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

“taxes on income” does not include a corporation tax ;

“prescribed” means prescribed by His Majesty in Council ; and

“Federal emoluments” includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income tax is chargeable.

NOTES.

S. 138: Taxes on Income.—These (which for the purposes of the arrangements set out in this section do not include Corporation tax) fall in a category between the taxes and duties in S. 137 and what might be called pure Federal sources of taxation like customs. One portion of the proceeds of Income-Tax is statutorily allocated to the Provinces and distributed among them in a prescribed manner.

"Corporation Tax" is defined in S. 311 (2) as meaning, "any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorising companies to make deductions in respect of income-tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application."

It will thus be seen that the wholly Federal portion of the tax is confined to super-tax on the profits of companies.

Taxes on agricultural income are a wholly provincial source of taxation. (See Item 41 of List II, Sch. VII); and hence the reason for their exclusion. Agricultural income is defined in S. 311 (2) as meaning "agricultural income as defined for the purposes of the enactments relating to Indian Income-tax", thus incorporating within the Statute the definition in the Indian Income-tax Act.

Agricultural income is defined by the Indian Income-tax Act in S. 2 (1). This definition cannot be varied by the Federal Legislature unless the Bill for the purpose has obtained the previous sanction of the Governor-General. (S. 41 *infra*.)

The problem of Federal Finance.—One of the most difficult problems in connection with Federal Finance was the question of the allocation of income-tax between the Centre and the Provinces and *inter se* the Provinces. It will be noticed that income-tax was the one direct tax that went into the Federal fisc. Two factors were pressing towards the assignment of the proceeds of this tax to the units producing it. First, the Provinces which were heavily hit by the depression from 1930 onwards (particularly Bengal) had to be provided with some source of revenue which would keep them on an even keel, and they were clamouring for the refund of the income-tax raised in their territory. Secondly, the entry of the States into the Federation necessitated a measure of equality of burden among the several units. No difficulty arose in the sphere of indirect taxation which constitutes four-fifths of the Central revenues but the difficulty was felt in regard to direct taxation. The States made it clear from the outset that they would not consent to have incometax raised within their area from state-subjects and therefore the only mode of bringing about equality of contribution among the Units was to remit to the Provinces the income-tax raised therefrom. But the needs of the Centre were paramount, and with (1) the increased expenditure of over two crores in connection with deficit Provinces (excluding the contribution of 1 crore to the N.W. Frontier Province which is being paid from 1932), (2) the expenses in connection with the inauguration of Federation, *viz.*, the additional expenditure required by reason *inter alia* of the increase in the size of the legislatures and electorates and the establishment of the Federal Court amounting to $\frac{1}{2}$ crore per year, (3) the financial adjustment with the States set out in S. 147 which entails a loss of about 1 crore per annum to the Central resources, (4) the separation of Burma, which is estimated to produce a loss of about 3 crores of rupees per year, it was unthinkable that the Centre could forego the entirety of the proceeds of incometax which bring in normally about 13 or 14 crores.

The White Paper Scheme.—The White Paper 1933 suggested that between 50 and 75 per cent. of the proceeds of incometax would be refunded to the Provinces as may be fixed after fuller enquiry, and that the proportion fixed should be handed back gradually over a period of about 10 years.

Modifications.—The Joint Parliamentary Committee were of the opinion that the Centre could not afford to part with over 50 per cent. of the proceeds of the tax in any event, and suggested that instead of the Act prescribing a fixed timetable for the process of transfer, the actual periods may be determined later by Order in Council.

The Niemeyer Report.—The Act adopted the recommendations of the Joint Parliamentary Committee and left the proportion and the periods to be prescribed by Order in Council. Soon after the Act was passed Sir Otto Niemeyer was appointed as an expert to investigate and make recommendations in regard to the matters left for future fixation in S. 138, and his recommendations have been accepted in their entirety and are embodied in the Government of India (Distribution of Revenues) Order in Council 1936.

Analogy of Tributes and Provincial share of Income Tax.—In the scheme of things therefore the 50 per cent. share of the proceeds of incometax (which in this context has always to be understood as excluding (1) the Tax on emoluments of Federal officials (2) the proceeds attributable to the Chief Commissioners Provinces and (3)

The Corporation tax is treated roughly as a Provincial contribution for a limited period, and is analogous to the contribution for a limited period and "ceded territory" in the shape of "tributary" and "ceded territory" and the present rates of tax and surcharge after the separation of Burma, are roughly expected to be in the region of 13½ per cent. It is estimated that the deductions from this sum of amounts on the ground of their being wholly expended—i.e., as attributable to Corporation tax, Chief Commissioners' Provinces and Federal elements would be about 17 per cent leaving a balance of about 12 per cent divisible between the Provinces and the Centre, and therefore when the Provinces are in receipt of the full amount due to them, the sum received would be in the region of 6 per cent. The proportions in which this sum is divisible among the Provinces is set out later.

The percentages and periods that are left to be prescribed by the Act have now been prescribed by the Government of India (Distribution of Revenues) Order 1936. The provisions of this section read with the Order in Council may be summarized thus. (i) One half of the net proceeds of income-tax as defined above (i.e., excluding Corporation tax) from Provincial sources belongs to the Provinces. To arrive at the distributable amount of the tax as stated before Income-tax on the emoluments of Federal Officials, and the share of the tax attributable to the Chief Commissioners' Provinces have to be deducted.

(ii) "The enjoyment by the provinces of the 50 per cent. share guaranteed to them is not to have immediate effect.

It is postponed.

(a) Firstly for a period of five years from 1st April 1937 during which time, the Provinces get only such amount if any of the divisible net proceeds of the taxes on income which together with the contribution by the Railways, exceeds the sum of Rs. 15 crores. (For Railway contribution see notes to S. 186 *infra*)

(b) Nextly for a second period of five years during which there is a gradual and automatic reduction of the amount withheld by the Federation. The amount withheld in the last year of the first period is taken as basic and the Federation is permitted to retain 5/8 of it in the first year, 4/8 of it in the second year and so on decreasing by a sixth in each of the succeeding years so that at the end of 11 years from the commencement of Provincial Autonomy the Provinces will be in full possession of the moiety allotted to them under sub-S. (1).

But this is subject to the power of the Governor-General in his discretion delaying the operation of the automatic grant to the Provinces under Provision (ii) to sub-S. (2) i.e., the coming into force of the second period mentioned above. The allocation among the several Provinces of the amount which does not form part of the Federal Revenues and therefore is distributable among the Provinces has been given by Order in Council as follows:

Bengal	20 per cent.
Bombay	20
Madras	15
United Provinces	15
Bihar	10
Punjab	8
Central Provinces and Berar	5
Assam	2
Orissa	2
Sind	1
N.-W.-P.	1
Total	100

The subjects of Indian States are not liable to income tax, notwithstanding that it is a tax for Federal purposes. The existence of this exemption in favour of the States does offend against the principles of equality of treatment of the units. The Joint Parliamentary Committee however, justified this disparity in these words. "If the problem is considered merely as one of striking a theoretically correct balance between the States and British India, on the assumption that the states will

not be subject to the Federal income tax, there are many factors to be taken into account. Some of the Federal expenditure will be for British India purposes only, such as subsidies to deficit British India Provinces; there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone; and further, part of the proceeds of taxes on income is derived from subjects of Indian States, *e.g.*, holders of Indian Government securities and share-holders in British India companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India. It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income tax could equitably be retained by the Federation. It will be wiser to base the division upon the financial and economic needs of the Federation and the Units. Nor is it likely that any disequilibrium between British India and the States that might result from such a method of treatment would be of a serious character". (J.P.C. Para. 249.)

Federal Surcharges.—Federal surcharges are leviable within the territory of Federating States equally within the territory of the Provinces. But the mode of collection is not the same. The State may agree to pay the tax itself and recoup the amount from its subjects by some other mode of taxation which the Ruler may deem suitable. Thus, though the tax may be technically levied in the State the incidence of the taxation may not be the same as in British India.

139. (1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

(3) Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court and if he establishes to the satisfaction of that Court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.

NOTES.

S. 139: Corporation Tax.—As stated earlier, Corporation Tax is used to designate supertaxes on companies, which are paid on behalf of themselves and not on behalf of the share-holders and to which in consequence the refund provisions will not apply. It is expected that the States would include in their Instrument of Accession this tax among the subjects on which the Federal Legislature could legislate.

"The States always made it plain that they would preserve to themselves the right not to withhold contributions but to decide whether contributions should be derived from direct taxation as in the case of Mysore, or whether equivalent payment should be made out of the revenues of the State to that which would be leviable if it were raised by the Corporation Tax. (*Par. Deb. Vol. 300, Col. 78*).

140. (1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding subsection, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

NOTES.

S. 140.—The taxes mentioned in the section form an intermediate group designed to secure flexibility in Provincial Finances. Having reference to the allocation of the subjects the expenditure at the Centre is almost stereotyped and apart from the expenses resulting from any war is likely to be fairly constant. The principle sources of expanding revenue, Customs and Income-tax have been allocated to the Centre, wholly or in great part.

The Provinces to which are committed the development of Social Services and the expansion of the nation building departments, have been left without much of resources, if they are to make any success of Provincial Autonomy. This section seeks to mitigate in some measure the financial stringency of the Provinces. If the taxes assigned exclusively to the Federation bring in sums sufficient to meet Federal expenditure, the Federation might be expected to relinquish the whole or a portion of the salt excise duty from which the Central Revenues derive at present, about 8 Crores, and Export duties which bring in 4 Crores (now classified as Customs), in favour of the units.

Special provision is however made in the case of the export duty on jute of which 62½ per cent. is allocated to the Provinces by Order in Council, and distributed among the Provinces growing jute—Bengal, Bihar, Assam and Orissa, in proportion to their production.

141. (1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression "tax or duty in which Provinces are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.

NOTES.

S. 141.—The reason for the restriction on Legislative power by imposing the requirement of previous sanction is that the Provinces are interested in the maintenance of an arrangement under which they are entitled to share in the proceeds of the tax in the circumstances set out in S. 138; and the Federating States are interested in seeing that the Federation gets the maximum amount so that the occasion for the levy of Federal surcharges on Income-tax, or for the levy of Corporation Tax which may be levied in the States, may not arise.

142. Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces:

Provided that, except in the case of the North-West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made.

NOTES.

S. 142.—This section embodies the provision of aids to deficit Provinces and the amount of Federal contribution to the Provinces is fixed by Order in Council.

The amounts fixed for these Provinces are as follows:—

A. Permanent Provision.

(1) N.-W.-F. Province	... 100 Lakhs a year.
(2) Orissa	... 47 Lakhs per year up to 1942. 43 Lakhs per year in the years 1942-'46. 40 Lakhs per year subsequently.
(3) Assam	... 30 Lakhs per year.

B. Temporary Provision.

(1) United Provinces.	... 25 Lakhs a year up to 1942 only.
(2) Sind	... Gets aid for 50 years. 110 Lakhs in the year 1937-1938. 105 Lakhs a year in the years 1938-39 to 1947-48. 80 Lakhs per year in the years 1948-49 to 1968-69. 65 Lakhs per year in the years 1969-70 to 1974-75. 60 Lakhs per year in the years 1975-76 to 1980-81. 55 Lakhs per year in the years 1981-82 to 1986-87.

Except in the case of the N.-W. Frontier Province, in regard to which the subvention may be raised by Order in Council, in the case of all other Provinces the aid from Federal Revenues cannot be increased without the consent of both Chambers of the Federal Legislature. The intention is to avoid the danger that the Province instead of developing its resources may be tempted to rely on extended Federal assistance.

143. (1) Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

NOTES.

S. 143.—The 1st sub-section is designed to prevent any claim on the part of the Federation to levy and collect taxes and duties mentioned in the Federal Legislative list in the Federated States except under authority of a Federal Law thus carrying out the principle of S. 8 (2). That section is sufficiently explicit, but as it was apprehended that the provisions of this Chapter might enable an inroad to be made on that principle, the saving has been enacted.

The 2nd sub-section fixes 1st January 1935 as the crucial date. But by the Indian Burma (Transitory Provisions) Order 1937 Rule 3, for a period of 2 years from the commencement of Part III, (i.e., till 1st April 1939) the reference to the 1st January 1935 is to be read as the 1st January, 1937.

S. 173 (4) enables the Provincial Authorities to collect the taxes in arrear on 1st April, 1937.

It need not be stated that after the commencement of Part III, no Provincial Legislature can levy a tax enumerated in the Federal List. If however the Provincial Legislation was one passed before 1st January, 1937, the function of levy and collection continues to be performed by Provincial Authorities. By Rule 4 of the India Burma (Transitory Provisions) Order 1937, "taxes, fines, penalties or other sum required to be credited before the commencement of Part III, to any local or other fund, shall during the next two financial years following the commencement of Part III continue to be so credited and shall not be deemed to be part of the revenues of the Provinces". But the utilisation of the funds for provincial or local purposes can continue only so long as Central or Federal Legislation does not make provision to the contrary.

144. (1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

(2) Subject as aforesaid, and to any other express provision of this chapter, an Act of the Federal Legislature may, in any case where under this Part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

NOTES.

S. 144.—Sub-S. (2) The special provision for appeal to the Federal Court made in the case of the States for determining the disputes regarding the amount of Corporation Tax payable by them is saved by this sub-section.

The Crown and the States.

145. There shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

146. All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

NOTES.

Ss. 145 & 146.—Notwithstanding that the States Enquiry Committee accepted the view put forward by the Princes that their relations were with the Crown direct—as distinguished from the Government of India, and the provisions of this Act embodying that view have placed 'paramountcy' outside the Federal sphere, (See Ss. 3 and 285 and Cf., S. 180) the Federal Revenues have been debited with the expenditure incurred by the Crown Representative. (See S. 286). The expenditure under the head has been "charged on the Revenues of the Federation" under S. 33 (1) and by virtue of S. 34 (1) not only are they withdrawn from the vote of the Legislature, but is one of the items which cannot be discussed therein.

Whatever justification there was for debiting this item to Indian Revenues at a time when tributes were being credited to the Indian Exchequer, must disappear with the policy of S. 147 providing for the abolition of tributes and for the payment of compensation to the Indian States in respect of Ceded Territories.

The necessary direction of His Majesty has been given for the inclusion of these items in the Revenues of the Federation.

The States Enquiry Committee (Financial) recommended the remission of the tributes of all those States whose tributes were in excess of 5 per cent. of their annual revenue to the extent of the excess, whether they joined the Federation or not. They further recommended the abolition of the tribute payable by Kolhapur in respect of the expenses of the Agency. (See Notes to S. 147.) In the case of the rest of the tributes however, the remission is recommended to be made "dependent on their joining the Federation", which is expected to act as an inducement to the Princes to join it.

An analogy has been drawn between the contribution by the Provinces in respect of Income-tax and that of the States in the shape of tribute and the abolition of the tributes has been timed roughly to proceed *pari passu* with the grant to the Provinces of their share of the proceeds of Income-tax.

147. (1) Subject to the provisions of sub-section (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—

(a) in return for specific military guarantees, or

(b) in return for the discharge of the State from obligations to provide military assistance, there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, but in the first mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section—

(a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in sub-section (2) of the said section, whichever first occurs; and

(b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State; and

(c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter "cash contributions" means—

(a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent;

(b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;

(c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

(a) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt;

(b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;

(c) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

(d) privileges in respect of free service stamps or the free carriage of State mails on government business;

(e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and

(f) the right to issue currency notes, not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7) An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain

NOTES.

Federal Finance—General.—This section, which embodies the main part of the scheme of Federal finance *quoad* the Indian States, is based on and carries out the recommendations of the Indian States Enquiry Committee (Financial) commonly known as the Davidson Committee. The Indian States now pay to His Majesty "cash contributions" or "tributes" which form part of the revenues of India under S. 20 (3) (i) of the Government of India Act, 1915. These tributes amount to a little over Rs. 77 lakhs per year including inter-state contributions which have lapsed to or been assigned to the British Government. The Committee recommended that if these "contributions" exceeded 5 per cent. of the total revenues of the State, they should be unconditionally remitted, as being unfair and excessive. The sum thus recommended for remission comes to a little over Rs. 11 lakhs. Further five Indian States—Hyderabad, Gwalior, Indore, Dhar and Sangli have "ceded" or assigned certain territories in return for guarantees of military assistance. The annual value of these territories, have been, except in the case of the territories ceded by Hyderabad, evaluated by the Committee and they amount about 37 lakhs of rupees. Further two States, Indore and Dhar have capitalised the "tributes" payable by them and have transferred Government Promotes or paid sums which have been invested in Government Promissory notes amounting in all to Rs. 26 lakhs. These three items form the credits to which the Indian States are entitled.

These "contributions" have been recommended to be remitted in their entirety and "compensatory payments" recommended in respect of the other two items mentioned before, dependent however on the important condition that the States concerned accede to the Federation.

Even then however the remission and the compensatory payments are subject to two limitations one as regards the amount, the other as regards the time.

I. Amount.—It is not the whole of the tribute or compensatory payment that is to be remitted in favour of or paid to a State, but what is called an "immunity debit" is raised against the States in enjoyment of the "immunities" and it is only the balance of the tribute or compensatory payment after setting off the "immunity debit" that is liable to remission or is to be paid as the case may be. An "immunity" may be explained in non-technical language as an economic privilege enjoyed by a State by reason

of any treaty or arrangement or by virtue of its Sovereign rights, which operate to adversely affect sources of Federal Revenue, which is capable of monetary evaluation.

(Most of these privileges have been valued by the Davidson Committee and the total value of the immunities of all the States has been found to be about Rs. 255 lakhs.)

II. Period.—Neither the entire cash contribution nor the full amount of the compensatory payment (subject of course to the deduction stated above) is to be remitted or paid immediately on their accession, but the remission and the payment are timed to take effect *pari passu* with the enjoyment by the Provinces of their share of income-tax under S. 138 and in any event not later than a period of 20 years from the commencement of the Federation.

Sub-S. (1): "Cash Contributions".—The Davidson Committee observe:—"An ideal system of Federal Finance would be one under which all Federal units would contribute on a uniform basis to the Federal Resources. Cash contributions in general contravene this fundamental principle; not that there is anything in them as such inconsistent with the Federal idea. But these tributes have no counterpart in British India, apart from Income-tax; but they are both arbitrary and unequal in their incidence on individual States. Many States do not pay tributes at all, and the distinctions between the States as to the amount are largely the result of historical accidents. As between Federal units, such payments have no logical basis." They therefore recommended the abolition of cash contributions.

The definition of "cash contributions" in this section, (sub-S. (5)) is founded on the classification of such contributions drawn up by the Davidson Committee; they are there divided into seven classes, which however are not mutually exclusive and many of the tributes fall under more than one head of classification.

1. Periodical contributions in acknowledgment of suzerainty including contributions payable in connection with any arrangement for aid and protection. The subsidies payable by the States of Bundi, Jaipur, Sirohi, Udaipur, Kotah, of Cochin in part, Mysore, and Porbandar fall under this head.

2. Contributions in commutation of any obligation to provide military assistance to His Majesty. The subsidies payable by Bhopal, Indore, Jaora, Dewas fall under this category.

3. Contributions in respect of the maintenance by His Majesty of a special force in connection with a State. Subsidies payable by Cochin (in respect of the expense of one battalion of native infantry under Art. 2 of the Treaty of 1809) and Travancore fall under this head.

4. Contributions in respect of the maintenance of (a) Local Military Forces or Police. The amounts payable by Jodhpur, Kotah, Tonk, Udaipur, Indore and certain other Central India Agency States fall under this head. (b) Expenses of an agent. The State of Kolhapur pays annually about Rs. 48,000 towards the Residency expenses and the pay of the Resident.

5. The contributions specified in Cl. (b) of sub-S. (5) are in relation to subsidies payable by the States of Jhalawar, Lawa, Ajaigarh, Bhat, Charkhari, Panna, Indore, Cutch, Bhavnagar, Manipur (Rs. 5,000 out of the tribute) Cooch Behar, Benares, and certain States in the Punjab.

6 and 7. The contribution payable under cl. (a) of sub-S. (5) would fall under two heads. (a) By conquest or lapse of the original recipient. One portion of the Travancore tribute, about Rs. 13,500 represents the equivalent of the Nazarana agreed in 1764 to be paid to the Nawab of the Carnatic and which has lapsed to the British Government. The tributes payable by the State of Shahpura in the Rajputana Agency and certain States in Bombay, Bihar and Orissa and Central Provinces fall under this category.

(b) By assignment from the original recipient. These cover certain assignments of contributions by the Baroda, Gwalior, Indore and Dhar States of inter-state tributes to the Crown.

Ceded Territory: Sub-S. (2).—The expression "have been voluntarily ceded" is used to exclude cases of annexation or confiscation. For, the whole of British India itself is mainly an aggregation of annexation and confiscation. Secondly amounts are payable by virtue of this section only for cession of 'territory' not for cession of 'jurisdiction'.

Tributes and cession of territory are treated on an equal footing as they have had for the most part a common origin, and as often as not it was entirely a matter of chance whether a State paid tribute or ceded territory instead.

The identification of Ceded Territory presented a problem of great complexity but it has been solved by the labours of Mr. V. Narahari Rao, of the Foreign Department, and his identification has been agreed to by the States concerned. The States Enquiry Committee (Financial) has given money value for the several Ceded territories.

The Committee recommended (para. 164) that the payment of the annuities in respect of the ceded territory should be conditional and should begin only after the entry of the States into the Federation. They also recommended that the share payable to them should bear the same proportion as the share of income-tax distributed to the Provinces under S. 138.

Sub-S. (2) (a).—The States benefited by this are Hyderabad, Baroda, Gwalior and Indore. The amount due to the Hyderabad State was not evaluated, because the representative of that State stated that it desired the continued maintenance of the subsidiary force under the obligation of the treaty of 1800. In the language of the sub-S. (2), the guarantees not having been waived, no amount is payable to the State for the territories ceded. Baroda, Gwalior and Indore have been recommended an annual compensatory credit of 22.98 lakhs, 11.75 lakhs and 1.11 lakhs respectively.

Sub-S. (2) (b).—“It was found that the existing drafting did not cover the case of the State of Sangli, one of the five States which have Ceded territory or waived guarantees. Sangli is a small State in the Deccan, which has Ceded territory, and these words are necessary in order to cover the point.” (*Par. Deb. Vol. 302, Col. 947*).

The compensatory credit to Sangli has been fixed at Rs. 1.1 lakh per annum by the Davidson Committee.

Twenty years.—The Davidson Committee recommended that payments to be made by the States after setting-off the value of the privileges and immunities enjoyed by them should disappear at least *pari passu* with the contributions in the form of taxes on income from the Provinces to the Federal Government and that a moiety of the contributions should disappear at the end of ten years and the whole not later than 20 years from the date of the accession of the State. It will be noticed that the Government of India (Distribution of Revenues) Order in Council 1936, prescribes a period of 10 years (subject to the power of the Governor-General to enlarge the period if he is of opinion that it is required for the financial stability of the Federation) at the end of which the Provinces would be in possession of their prescribed share of 50 per cent. of the proceeds of Income-tax. (*See S. 138*) This sub-section is based on the analogy drawn between subsidies paid by States and income-tax derived from the Provinces and seeks to ensure roughly that the Provinces and the States shall rank alike for remission.

“The period prescribed in sub-S. (2)” would mean, in case the period of 10 years prescribed by the Order in Council is extended by the exercise of the discretionary power of the Governor-General under the same sub-section, the extended period.

Sub-S. (4).—This sub-section is really a part of sub-S. (2). Certain States capitalised their contributions and this sub-section is intended to provide for their case. The States benefited by this provision are two. Indore which capitalised its contribution in 1865 at Rs. 23 lakhs which has been invested in Government Promissory Notes and the interest from which has been taken in lieu of the annual cash contribution and the State of Dhar which capitalised in 1880 its annual contribution of Rs. 12,000 by surrender of Government securities to the value of Rs. 3 lakhs. Under this section these two sums, would in the event of their acceding to the Federation be treated as a subsidy and would be repaid to them in the same proportion as other tributes.

Immunity Debts: **Sub-S. (3) (b) (c).**—As against the remission of cash contributions and the payments in respect of the ceded territories provided for by sub-Ss. (1) and (2), which are treated as credits due to the Federating States, sub-Ss. (b) and (c) raise in respect of the two species of credits created by sub-Ss. (1) and (2), immunity debts which are to be set-off from the credits and it is only the balance that is payable to the State or States concerned. An immunity debt is raised against a State in respect of the privileges which it enjoys by way of exemption from contributing to Federal Revenues

to which a money value can be attached. Certain courtesy concessions which are being enjoyed by the States in the matter of exemptions from customs are being continued without immunity debts and similar privileges have been extended to the Governor-General and Governor, on the ground of their being representatives of the Sovereign. Cf., Sch. III Rule (4)

Of course, it is open to a State to surrender an immunity on its accession in which event there will be no debit against such a State. These immunities or privileges, so far as they can be evaluated in terms of money, are really diversions from what are *prima facie* the legitimate Revenues of the Federation, if these are to be continued after the advent of Federation; and therefore they are evaluated in terms of the loss caused to Federal revenues by their continuance, and the amount is debited against the State concerned, unless the State is willing to abandon or surrender the privilege. But in connection with these immunities two points have to be noticed.

(1) The immunity debit is not payable by the State concerned according to the Federation but is only available as a set off against any claim by the State concerned in respect of remissions of tributes or payments due to the State as compensation for ceded territories. Thus while the total immunity debts against the States as a whole in respect of salt, customs, service stamps, free-correspondence and coinage, as valued by the States Enquiry Committee total over 255 lakhs, the total of the tributes and the value of ceded territories is in the neighbourhood of Rs. 117 lakhs. In any event, the excess over the latter sum is lost to the Federation.

(2) A further factor which operates to the prejudice of the Federal revenues and in favour of the States is the fact that each State is treated as a separate unit in the Federation and is not concerned with the immunities of other States. There are some States who have only credits while there are others with only immunity debts without any credit on the other side of the account. The result is that the benefit of the tributes and the value of ceded territories to the full extent of the 117 lakhs cannot accrue to the Federation. This has been so designed to make it easy for the States to accede to the Federation, for in cases where a State has a heavy immunity debit like Kashmir, in respect of sea customs, there is no financial loss in acceding, while there is the undoubted advantage in having a voice in the policy of the Federal Government; and in cases where there is a large sum due by way of contribution or for value of ceded territories, with a comparatively small immunity debit like Mysore and Baroda, there is every inducement to join the Federation, for the remission of the tributes and the compensatory payments for ceded territories are due or payable only if the States accede to the Federation. That explains in part the reason why a State like Hyderabad with a heavy immunity debit chose not to waive the military guarantees in return for which territories were ceded, for if the other alternative had been chosen, the amount payable to the State would have been wiped out by the immunity debit. The net result of the arrangement may be summed up as, the creditor States shall be paid, but the debtor States need not pay.

The total annual loss to the Central Revenues by the accession of the States is estimated at approximately 1 crore of Rupees. This is subject however to one qualification which is introduced by S. 149. When in any year the Federation proposes to distribute to the units the proceeds of any duty—see for instance S. 140, the amount payable to the State will be set off against the immunity debit in respect of a like duty and only the balance if any will be payable to the State.

Sub-S. (8).—"The treaties and agreements which have been made from time to time with the Indian States fill several volumes, and a variety of terminology is used in these various documents. In considering the number of different phrases which have been used, it has been thought that, as a matter of drafting, the word "right" and "advantage" should be added to the word "privilege" in order to cover the very varied terminology which is used in these documents. (*Par. Deb. Vol. 302, Col. 949-50*).

Sea Customs and the Maritime States.—Discussing the position of the maritime States the Joint Parliamentary Committee stated: "Of the problems discussed in the Indian States Enquiry Committee's Report, the most difficult and serious is that of the maritime States in relation to sea customs. The present position, which varies between one State and another, is fully explained in the

Report; and we understand that at the moment questions of importance are at issue between the Government of India and some of these States on this subject. We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the Maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State; but we recognise that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system. It is unnecessary to emphasize the importance of securing that there is a genuine uniformity in the rates of customs duties levied respectively at State ports and at the ports of British India." (J.P.C. Para. 165).

After discussing the comparatively simpler problem of Cochin and Travancore as regards the customs duties collected at the Cochin port which is based on agreements, the Davidson Committee state: "The case of the ports wholly owned by Maritime States is substantially different. The customs rights of the Kathiawar and other States are, with very few exceptions, not the creation of any Treaty or Agreement but exist by virtue of the States' own sovereignty. They are rights cherished not only because of their financial importance but also because they are the outward symbol of much that the States greatly prize. Indeed, in many instances the very existence of a State may be said to be bound up with its port. We understand and appreciate this point of view, but nevertheless we find it hard to reconcile with the ideal of a true Federation the retention by any Federal unit of its own sea customs receipts. Certain Maritime States have stressed the point that the surrender of the right, possessed and exercised by most States, to levy land customs duties, is not in contemplation. But the analogy is a false one, for inland customs duties, in so far as they are levied on goods from overseas, are an addition to the duties already paid at the ports, and their collection by the inland States does not subtract from the general customs revenues of the Federation.

"We are, however, convinced as the result of our enquiries that no port-owning State is likely to surrender its customs rights even in return for full compensation. We have, moreover, already stated our opinion that on many grounds, the nature of the rights, whether under Treaty or by virtue of sovereignty possessed by the maritime States, the impossibility of forecasting the future of trade or fiscal policy; the probability that, in some cases at any rate, natural processes are likely to produce a progressive deterioration in value of a port—it would not be advisable for any offer to be made at the present time for the acquisition of the customs rights of the States, other than those rights possessed by Travancore and Cochin in the port of Cochin.

"If, therefore, the port-owning States are to enter the Federation, as every one must desire that they should, room must be found for a compromise in which ideals and logic would yield in some measure to hard facts. An arrangement whereby the Maritime States were at least enabled to retain in their own hands the value of the duties on goods imported through their ports for consumption by their own subjects, even though it would involve some slight diminution of Federal Revenues, might well be accepted in a Federal Scheme embracing so many diverse elements. In recommending that it be considered how far such an arrangement would be practicable, we do not exclude the possibility of modifications or adjustments to meet local circumstances." (*States Enquiry Committee Report*, paras. 380-382).

The extent of immunity enjoyed by the States in respect of sea customs, is estimated by the States Enquiry Committee at roughly 182 lakhs of Rupees per annum.

The Salt Immunity: Sub-S. (6) (a).—Salt has been one of the objects of taxation in India from time immemorial and has been levied from the earliest times of the Company's administration. In as much as the States possessed their own salt works, great trouble was experienced in preventing the entry of Indian State salt into British India; and by about 1880, the Government

of India was able to establish an effective degree of control over salt sources in India. The method adopted was to take over the salt works from the several States for production by the British Government and suppress other works in the States and they also brought about the elimination of inter-State transit duties as to salt. Apart from Kathiawar and Cutch where the arrangements were concluded on a Paramountcy basis, the agreements of other States were of the ordinary commercial type embodying provisions as to compensation in respect of surrendered rights. The States desired the Davidson Committee to revise their agreements, but they refused to do so on the ground that acceptance of the terms originally offered was voluntary on their part.

The salt monopoly of the Government of India, has ensured that with small exceptions, the population of the States as well as British India contribute equally to the Federal fisc.

"Privilege or exemption in relation of salt" means "the extent of the exemption enjoyed by the State through the operation of its treaties and commercial agreements from the contribution to the Central Revenue which is made through the incidence of the tax by the Provinces of British India and by other States."

The States Enquiry Committee evaluated the immunity under this head in Appendix V which comes to a total of over Rs. 46 lakhs in respect of all the Indian States including the Kathiwar States.

Posts & Telegraphs, Free Service-Stamp, etc.: Sub-S. (6) (d).—The privilege of the right to receive free service-stamps for their official correspondence is enjoyed by 27 States—enumerated in App. VII Sch. B. of the Davidson Committee Report and the total annual value of such grants comes to a little over Rs. 3 lakhs. The list of States entitled to the free carriage of official correspondence is set out in Sch. C, Appendix VII. The immunity in respect of this item amounts to over Rs. 7 lakhs per annum.

There are certain privileges enjoyed by the States in connection with the Telegraphic system but on the ground that the telegraph system was not self-supporting and on general grounds no cash value has been attached to these privileges.

With the advent of the Federation, it is expected that it would be insisted in respect of all States that they should accept "Post and Telegraphs" as a subject on which the Federal Legislature could legislate. The result would be that the Postal systems of State, would necessarily have to disappear; but as the maintenance of a separate postal system constituted more a privilege of a political or sentimental nature, rather an immunity to which a cash value could be attached, the States Enquiry Committee recommended that it should be left out of account.

Free Import in Bond: Sub-S. (6) (e).—This privilege is enjoyed by the State of Kashmir under a Treaty of 1870. Kashmir undertook to refrain from taxing merchandise passing from Central Asia into British India through the State, and in return for that loss of Revenue, was accorded the privilege of importing seaborne goods in bond. The administrative arrangement by which this is effectuated is by refunding to the State, the amount of duty collected at the ports, on the authority of endorsements on the invoices by the Residency Authorities. The sum thus paid to the State is very near 30 lakhs. The States Enquiry Committee recommended the valuation of this immunity at Rs. 25 lakhs a year.

Coinage & Currency.—Coinage and currency is a subject in the Federal List and it is essential for any federation that there should be uniformity of currency and coinage within the entire area of the Federation. The rights of some States to claims in regard to the right to mint coins and issue currency notes detract from the uniformity and so provision is made for buying out the rights. The number of States that possess rights of coinage are less than twenty and of these only seven deserve serious consideration, as having a right to mint coins of higher value and only Hyderabad possesses a paper currency which produces considerable profit. Except in the case of Hyderabad, the States Enquiry Committee do not recommend buying out, as the exercise of their right by the States is not likely to involve any serious competition with the Federation. The Hyderabad claim is evaluated at Rs. 17 lakhs a year.

148. Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

Certain payments to Federated States, etc., to be charged on Federal revenues.

NOTES.

S. 148.—The payments referred to in this section are charged on the revenues as they are compulsory payments which cannot be subject to the vote of the Legislature.

The section reproduces the provision of the Government of India Act, 1919, S. 20 (2) (b), under which sums payable in respect of treaties, covenants, contracts existing at the commencement of the Act, were charged on the revenues of India.

149. Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set off against the payment or distribution.

Value of privileges and immunities to be set off against share of taxes, etc., assigned to Federated States.

NOTES.

S. 149.—See Notes to S. 147.

Miscellaneous Financial Provisions.

150. (1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India.

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws.

Expenditure, defrayable out of Indian revenues.

NOTES.

S. 150.—(1) This sub-section reproduces the provision of S. 20 (1) of the Government of India Act, 1919, under which the Revenues of India were to be applied to the Government of India alone. In particular, provision was made by S. 22, which runs as follows:—

(1) Except for preventing or repelling actual invasion of His Majesty's Indian possessions or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those Revenues.

(2) Where any naval forces and vessels raised and provided by the Governor-General in Council are in accordance with the provisions of this Act placed at the disposal of the Admiralty, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any such vessel or forces if and so long as they are not employed on Indian naval defence.

The aforesaid provisions are not reproduced in this Act, but they flow from the implications of S. 150 (1). It would further seem from this Act that Parliamentary sanction by way of resolution would not be sufficient to legalise the utilisation of the revenues of India for other than the purposes of India but that Parliamentary Legislation would be necessary. In view of this section enabling the "revenues of the Federation" being expended for the purpose of "India", which term includes the Indian

States whether they accede to the Federation or not, loans might be made out of the revenues to them, by the Federal Government in the case of the Federating States, (S. 164) and by the "Crown Representative" in other cases.

Sub-S. (2).—This provision would have to be availed of for enabling grants by Provincial Legislatures to several Universities in the Provinces *e.g.*, the Madras University, which have been classified as Federal by the Adaptation Order.

151. (1) Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(2) In the exercise of his powers under this section the Governor-General or a Governor shall exercise his individual judgment

NOTES.

S. 151: Custody of Public money.—The scope and purpose of this section has thus been explained. "The section relates to the custody of public money and its object is that all public moneys shall be paid into the Revenues of the Federation or Province as the case may be. This is with a view to regularising the receipts of money and finally allocating those receipts either to the Revenues of the Federation or of the Province. It is desired in the first place, to prevent any department making money on its own account. For instance, a department might sell land and then appropriate the proceeds of the sale to its own finances, and thereby upset the appropriations that had originally been authenticated for it, or the public works department might buy a piece of land and thereby increase the amount of the grants voted for the purposes of that department. Another object of the clause is to ensure that no Government Officer can keep sums of money in his custody. It is provided that he should pay such sums into the treasury of the Province or Federation, as the case may be. In India the treasuries are scattered about and it is important to ensure that moneys should be paid directly into the treasury of the Province or Federation. In the case of certain departments like the Post Office, it is necessary to make exceptions and these are provided for by the words 'with such exceptions as may be specified in the rules'.

"This duty was laid upon officers and departments under the existing Government of India Act. That is to say up to now this matter has been governed by Devolution Rule 16, to which statutory sanction is given in the existing Government of India Act. We regard this form of regulating the finances as so important that we think this provision ought to be put into the Statute. We are doing so with a view to creating the financial procedure I have indicated and this clause implies little more than that we are inserting in this Bill the terms more or less, of the present Devolution Rule 16, in the Government of India Act." (*Par. Deb. Vol. 300, Cols. 1400-1401*).

Exercise by Governor-General of certain powers with respect to Reserve Bank.

152. (1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

(a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office;

(b) the appointment of an officiating Governor or Deputy Governor of the Bank;

(c) the supersession of the Central Board of the Bank and any action consequent thereon; and

(d) the liquidation of the Bank.

(2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

NOTES

S. 152.—His Majesty's Government made it clear that finance could not be transferred to the Federal Ministers, unless provision was made for the control of the Currency and exchange being divested from the Government of India and entrusted to a body which would not be swayed by the economic theories of political parties in India. The Reserve Bank was accordingly created to which was entrusted those functions and provision was made to place the Directorate under the general control of the Executive, as distinguished from the Indian Legislature. But when the scheme of the Government of India Act contemplated an Executive responsible to the legislature, provision had to be made for excluding the responsible Federal executive from control over the Bank, and to vest those functions in the Governor-General personally, and outside Ministerial control. A distinction is drawn between the appointment of permanent officials, which is placed in the discretion of the Governor-General and the nomination of Directors which is within the field of the Minister, though herein again the Governor-General is entitled to exercise his individual judgment.

153. No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

NOTES.

S. 153.—See Notes to the previous section.

The White Paper proposed a requirement as to prior consent only to those portions of the Reserve Bank Act which regulated the power and duties of the Bank in relation to the management of Currency and Exchange. But the J.P.C. felt that the provisions were not wide enough and ought to cover the Constitution of the Bank itself. They said "We feel however that so narrow a definition leaves open the possibility of amendment to other portions of the Act which might prejudice or even destroy some of the features of the system which we would regard as essential to its proper functioning. It seems clear that the Act must be considered as a whole and we recommended that any amendment of the Reserve Bank Act, or any legislation affecting the Constitution and functions of the Bank or of the coinage and currency of the Federation, should require the prior sanction of the Governor-General in his discretion." Para. 391.

154. Property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State:

Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.

155. (1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India:

Exemption of Provincial Governments and Rulers of Federated States in respect of Federal taxation.

Provided that—

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof;

(b) nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.

NOTES.

Ss. 154 & 155: Mutual Exemption from Taxation.—"It is consistent with the general practice of federal constitutions to exempt the Governments of units from Federal taxation, that being merely part of a reciprocal arrangement under which the Federal Government also is exempt from taxation by the several units. The section merely proposes to continue the existing position. It confers no new exemption whatever upon any of the persons or authorities affected by the section and by two provisos (a) and (b), it is made plain that Government trading or business operations are not to be entitled to the exemption, nor is the personal property of the Ruler of a State to be able to obtain any exemption by virtue of this section". (*Par. Deb.* Vol. 302, Col. 523 and 524).

These two sections are complementary to each other and provide for the mutual exemption of the property of the Federation and the "units" from taxation imposed by the other. It will be noticed that whereas S. 154 speaks of the "property vested in His Majesty for the purpose of the Federation," so as to include moveable property also, (*Ct., Bell v. Municipal Commissioners of Madras*, 25 Mad. 457), S. 155 which confers exemption on the property of the "units" is confined to lands and buildings. The result would be that moveable property belonging to the Federation would be exempt from duties like octroi which might be levied under Provincial law, while goods of the Provincial Governments and "units" would be subject to the Customs and excise duties levied by the Federal Government. Income from commercial undertakings and operations in the nature of trade carried on by the units, so long as they are confined within the territory of that unit is not liable to Federal income-tax.

As between the units themselves there is no mutual exemption from taxation. (Ss. 172 to 175 define the property which vest in the Provinces and Federation.)

The proviso in favour of the Federation in S. 155, does not find a place in S. 154, evidently as the Federal Government is not expected to carry on any trade or business of any kind. But if it does, it would seem that it would still not be liable to provincial taxation.

With the provisions of these sections may be compared S. 114 of the Commonwealth of Australia Act which provides: "A State shall not impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State".

Municipal rate.—The levy of a Municipal rate has been held to be the imposition of a tax within the meaning of this prohibition. (*Municipal Council of Sydney v. The Commonwealth*, 1 Com. L.R. 208) "A Municipal Corporation cannot have any greater power to impose taxation than the state by which it was created and by which its own powers are conferred". The word "tax" in this context has been held to include not only "an enforced levy for the purposes of general Government" in the narrow sense of the term, but also any imposition by whatever name called. A State which has itself no power to make such a levy cannot confer the power under another name, and in a Constitutional instrument defining and limiting the power of Constitutional authorities, the word "tax" must be construed in the wider sense and the prohibition of the imposition of the

tax must be held to include a prohibition of any such imposition by a delegated authority. (*Ibid.*) The matter is however put beyond controversy by S. 154 which expressly enacts that the exemption extends to taxes imposed by "any authority" within a Province.

But would the levy of a rate for services rendered as being the price charged for a commodity furnished, come within the prohibition as to taxation? For instance, can a Municipality charge water-rate for the value of water supplied to a Federal property? It is submitted that such a charge would not contravene the prohibition. And there is authority for the position in the decision of the Court of Appeal in Ontario where they upheld a Municipal water rate on Federal lands. (*Clement's Canadian Constitution*, p. 646).

Scope of Exemption.—The exemption provided by these sections, it is submitted, is applicable only so long as the entirety of the interest in the property vests in the Crown, in right of the Province or the Federation and that if a derivative title is created in favour of a subject, that interest is liable to taxation and is not covered by the exemption.

In *Attorney-General for Queensland v. Attorney-General for the Commonwealth*, 20 Com. L.R. 148, where the validity of the Land Tax Assessment Act taxing leasehold interests in Crown lands was attacked as offending against S. 114, Isaacs, J., pointed out at pp. 174-5, that the tax in question is not placed on the State or in respect of an interest remaining in the State, it is placed on the lessee alone and in respect of what he himself possesses, and upheld the validity of the Act. As stated in a Canadian case "The exemptions provided for are for the interest of the Crown only, not of those who have derived beneficial interests in lands from the Crown". It is submitted that the rule thus enunciated would be applicable in the construction of this Act.

A question of considerable difficulty would arise in cases where immoveable property situated in a Province, or in the Federation is bequeathed by a subject to the Federation or the Province respectively. Could succession duty under Item 56, of List I or Item 43 of List II be charged on such bequests against the property in the hands of the Province or Federation as the case may be?

The American Courts have held such duty chargeable. The reasoning of O'Connor, J., in the *Commonwealth v. State of N. S. W.*, (3 Com. L.R. 807) that "the power to dispose of property by will or descent is always a statutory power and the State which confers the power may impose conditions upon its exercise", would seem to afford an affirmative solution to the question propounded.

Immunity of Instrumentalities.—Closely connected with the mutual exemption from taxation of Federal and Provincial property is the doctrine familiar in American Constitutional law, the doctrine of the "immunity of Instrumentalities," which flows from the American conception of Federalism. The doctrine enunciates an implied prohibition on the powers of Congress and the States against legislation affecting however incidentally the free exercise of the authority of the other. At an early stage of the history of the American Constitution, it was asserted that the Congress must not tax 'Agencies' through whom the States performed their Governmental functions and conversely that State Governments could not tax the agents or instrumentalities of the Federal Government. This principle was enunciated in the leading case of *M'Culloch v. Maryland*, (4 Wheaton 316) where the attempt of a State to tax a Bank chartered by the Congress was held to be invalid.

The rule has been chiefly invoked as a limitation on the power of the State and the Congress to tax the "instrumentalities" or Governmental agencies of the other.

The Privy Council has rejected this doctrine of implied prohibition as applicable to the Canadian Constitution, in *Bank of Toronto v. Lambe*, (12 A.C. 575), and to the Australian Constitution in *Webb v. Outrim*, (1907 A.C. 81). Lord Halsbury in delivering the judgment of the Judicial Committee in the latter case referred to the maxim *Expressum facit cessare tacitum* and said: "The legislature must have had in their minds the Constitutions of the several States with respect to which the Act of Parliament which Their Lordships are called upon to interpret was passed. The 114th section (corresponding to Ss. 154-155 here) of the Constitution Act sufficiently shows

that protection from interference on the part of the Federal power was not lost sight of. It is impossible to suppose that the question now in debate, (Provincial taxation of Federal emoluments, was left to be decided upon an implied prohibition, when the power to enact laws upon any subject whatsoever was before the Legislature." It is submitted that the reasoning of the Judicial Committee in *Webb v. Outrim*, concludes the matter against the applicability of the doctrine to a constitution such as that set up under this Act, so that there could be mutual taxation in cases not falling within the exemption provided by the two sections.

Power to engage in trade.—The question whether the Government had power to carry on operation in the nature of trade was somewhat of a moot question under the Government of India Act, 1915. The point arose in *Subramania Chetty, In the matter of 45 Mad. 156* on a claim by the Government of Madras to priority of payment in the administration of an insolvent's estate under the Presidency Towns Insolvency Act. It was contended that the priority conferred under the Act in favour of the Crown was not applicable to sums due in respect of a soap factory conducted by the Government on the ground that it was *ultra vires* of the Government to conduct such a trading operation. *Coutts Trotter J.*, without going into the question of the power of the Governments in India to engage in trading operations, held that as in the particular case the factory was conducted for the purpose of demonstration, the activity was *intra vires* and that the Crown had priority.

It is submitted that the proviso herein enacted make it clear that such power is included in the plenary powers conferred on the Governments under this Act.

Sub-S. (2): Exemption from Incometax.—In the case of Indian Government Securities to be issued hereafter, the exemption in favour of the Rulers of Indian States would not be applicable, unless specially provided by Federal Law.

156. Where under the provisions of this Act the expenses of any court

Adjustment in respect of certain expenses and pensions.

or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

(a) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province; or

(b) in the case of a charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province, there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

NOTES.

S. 156.—This section provides machinery for the adjustment of two kinds of expenditure, between the Provinces and the Federation, viz., (1) Expenses of a Court or Commission, (2) Pensions of Officials, when they are charged on the Revenues of a Province or Federation, when in reality or in equity they are properly debitable to the other body.

The more important of the two is however the head of Pensions. As pointed out earlier (vide Notes to S. 33 *supra*), under S. 247 (5) the pensions payable to or in respect of any person appointed to a Civil Service or a Civil Post by the Secretary of State is charged on the Revenues of the Federation, because by reason of the Governor-General's special responsibilities for the financial credit of India which has no replica in the Provinces, the Secretary of State and Parliament can ensure that monies shall

be forthcoming for the payment of those pensions. Cf., S. 157 which lays the duty on the Federal Government to transmit sufficient moneys for meeting the expenses of the Secretary of State.

157. (1) The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.

Duty of Federation and Provinces to supply Secretary of State with funds.

(2) Without prejudice to their obligations under the preceding subsection, the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner sufficient moneys to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

S. 157.—In the case of the Federation and the Provinces the ultimate power to see to the transmission of the funds rests in Parliament, in the case of the Federation through the special responsibility of the Governor-General for the maintenance of the financial credit of the Federation, and for protection of the services, and in the case of the Provinces through the latter special responsibility of the Governors.

Sub-S. (2).—The first sub-section would cover the funds specified in this sub-section but to allay the apprehensions felt by pensioners in England, specific provision was inserted putting the matter beyond controversy.

Explaining the need for this sub-section *Sir S. Hoare* said. "There has been a good deal of anxiety among the pensioners as to whether they were safeguarded under the clause. It is the intention of the Government to safeguard them, and I know that that is also the intention of this Committee. This sub-section will now make it quite clear that it will be an obligation upon the Federation and upon the Provinces to provide the Secretary of State with the full funds necessary to meet all the pension claims.

....."We make it an obligation that this money should be forthcoming, and the obligation is in the first place upon the Federation and the Provincial Governments to find the money. The obligation is secondly upon the Imperial Parliament to see that the money is remitted, and is paid to the pensioners. That seems to me to make the position water-tight.

"The whole of these pensions amount to about 1 per cent. of the Revenues of India. (They amount to about 4 million pounds a year or over 5 crores of rupees at the exchange of 1s. 6d.). Is it conceivable that the Governor-General and the Provincial Governors, acting, as they will, under the instructions of the Secretary of State, who in turn will act as the agent of the Imperial Parliament in this country, will not be able to provide this comparatively small sum? I do not believe that there is any reason why any pensioner should feel the least anxiety. It is a mistake, both from the Indian point of view and from the pensioner's point of view, to suggest that there is any risk or that there is any uncertainty". (*Par. Deb. Vol. 299, Col. 2177 etc.*).

158. (1) His Majesty in Council may make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of this section, such provision as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of this Act

Provisions as to relation of Burma monetary system with India.

with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other persons.

(2) Any sums required by an Order under this section to be paid by the Federation shall be charged on the revenues of the Federation.

Relief in respect of tax on income taxable both in India and Burma. 159. His Majesty in Council may make provision for the grant of relief from any Federal tax on income in respect of income taxed or taxable in Burma.

NOTES.

S. 158: Sub-S. (1).—"This section deals with an important and rather technical subject. This and the corresponding section in the Burma Act, make provision for the retention of Burma within the Indian currency system after the separation of Burma from India. As the currency system of India is to be managed in the future by the Reserve Bank of India it is necessary to make provision to enable the Reserve Bank of India to continue to function in Burma after Burma has ceased to be part of India. The arrangements necessary are being agreed between the Government of India and the Government of Burma. In so far as they can be made by amendment of the Reserve Bank Act to make it applicable to the changed conditions, the necessary action will no doubt take the form of legislation by the Indian Legislature. There are, however several matters which may fall outside the scope of such amending Legislation and to cover these in India the Clause proposes to take power to issue such Order in Council as may prove to be necessary. As originally drafted the Clause gave power to issue an Order in Council giving effect solely to arrangements agreed upon by the existing Governments of India and Burma. The financial adjustments consequent upon the agreed arrangements do not, however, fall within the scope of the matters to be so agreed between the two Governments, but come within the cognizance of the Tribunal which the Committee will remember was recently set up by the Secretary of State to advise on the formulation of a financial settlement between the two countries. The purpose of this section is to secure that matters connected with the agreements but not actually included in it are dealt with properly". (*Mr. Butler. Par. Deb. Vol. 299, Cols. 2186-87*).

The India and Burma (Burma monetary Arrangements) Order 1937, carries out the provisions of the section and entrusts the performance of banking and the control of currency to the Reserve Bank. Provision is made for the adjustment between the Government of India and the Government of Burma of the profits from Currency and note issue.

Sub-S. (2).—*Mr. Butler* explaining this sub-section said: "This sub-section is designed to meet a possible but not an immediate contingency. Broadly, the effect of the general financial settlement is expected to be the assumption by Burma of a net indebtedness representing her share of India's general debt and of pensionary liabilities so that Burma will be India's debtor till she has paid off both the capital sum and interest upon it. For several years to come, the period will, of course, vary according to the scheme of amortisation that is adopted, the amount of the annual payments thus due from Burma is expected to exceed any profits that may accrue to her as her share of the surplus profits payable to the Government of India and subsequently to the Federal Government by the Reserve Bank so that the latter will be set off against the former, the result being a net payment each year by Burma to India, and no actual payment by India will be involved. But if Burma still remains within the Indian currency system, as is expected, when the time comes that she has paid off her debts to India, India will then be liable to pay to Burma those profits and it is necessary, in Burma's interests, looking to that future state of affairs to provide that this payment when it becomes due from India to Burma is a fixed charge on India. That is the reason, in the interests of Burma in the distant or semi-distant future for including this new sub-section". (*Par. Deb. Vol. 299, Col. 2188*.)

By the Government of Burma (Miscellaneous Financial Provisions) Order 1937, made under the corresponding provision in the Burma Act, (S. 134), in accordance with the recommendations of the Amery tribunal, it is provided that for the year 1937-1938 the Government of Burma shall pay to the Government of India a sum of

Rs. 3,23,01,000 and the said sum is charged on the revenues of Burma. The contribution for the subsequent years is left to be prescribed by further Orders in Council.

S. 159.—Provision for relief has been made by the India Burma (Incometax Relief) Order 1936.

The relief provided is on the lines of S. 49, Indian Income tax Act and is available only in respect of about one half of the tax paid in the other country.

160. With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters.

NOTES.

S. 160.—The India and Burma (Trade Regulation) Order 1937 makes provision for the matters mentioned in the Section. The Order is operative for 3 years from separation, and thereafter is subject to termination by the Governor-General of India or the Governor of Burma giving twelve months' notice. It generally seeks to maintain the *status quo* in regard to import and export duties between India and Burma. See for details the Order in Council.

CHAPTER II.

BORROWING AND AUDIT.

Borrowing.

161. Upon the commencement of Part III of this Act all powers vested in the Secretary of State in Council of borrowing on the security of the revenues of India shall cease and determine, but nothing in this section affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

NOTES.

S. 161.—As Finance becomes a transferred subject, under the control of Federal Ministers and the Federal Legislature, as comprehended in Item 6 of the Federal List, "The public debt of the Federation", the control of Parliament and the Secretary of State (under S. 30 of the Government of India Act, 1915) is necessarily relaxed. But by para. X of the draft Instrument of Instructions, the Governor-General in the exercise of his special responsibility for safeguarding the financial credit and stability of the Federation is directed to see *inter alia* that a "borrowing policy is not pursued which would in his judgment prejudice the credit of India in the money markets of the world".

The saving is with regard to the powers of the Secretary of State to borrow during the transitional period between the commencement of Provincial Autonomy and the inauguration of the Federation for which See S. 315.

162. Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling, the executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

NOTES.

S. 162.—The provisions of Part XIII are in force only till the inauguration of the Federation and the powers of the Secretary of State to raise sterling loans under S. 315 terminate with Part XIII.

The power of the Federal Government to borrow on the security of the Revenues of the Federation is subject only to the limitations, if any, fixed by Federal Law and by the exercise of the Governor-General's power as stated in the Notes to S. 161. The loan may be raised in India or elsewhere.

163. (1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still out-standing any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council.

A consent under this sub-section may be granted subject to such conditions, if any, as the Federation may think fit to impose.

(4) A consent required by the last preceding subsection shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General and the decision of the Governor-General in his discretion shall be final.

NOTES.

S. 163.—The power of a Province to raise a loan in India is unrestricted, save as a result of limits imposed by the legislation of the Province unless it is still a debtor to the Centre or the Federation; or if the Centre has guaranteed an outstanding loan raised by the Province, in which case the consent of the centre or Federation is requisite before the loan can be raised.

The consent of the centre or Federation is also required if the Province desires to raise a loan outside India.

The consent of the Federation however is not to be unreasonably withheld, nor, can it impose unreasonable conditions, and the Governor-General acting in his discretion is erected as the final authority to pronounce on the reasonableness of the conditions insisted for consent or the withholding of the consent, as the case may be.

The previous provisions on the subject were contained in the Local Government (Borrowing) Rules made under S. 30 (1-A) of the Government of India Act, 1919

under which (Rule 3) the sanction of the Governor-General in Council was needed for the raising of loans in India and that of the Secretary of State in the case of loans raised outside India.

164. The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

Loans by Federal government to Federated States.

NOTES.

S. 164.—See Notes to S. 150 *supra*.

165. (1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so however that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with with respect to all such stock so issued by the Federation.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.

(3) In paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, the words "or any other securities the interest in sterling whereon is payable out of, and charged on, the revenues of India" shall be repealed:

Provided that, notwithstanding anything in this Act, any securities which by virtue of the said words were immediately before the commencement of Part III of this Act securities in which a trustee might invest trust funds shall continue to be securities in which a trustee may invest such funds.

NOTES.

S. 165.—Indian loans issued by the Secretary of State, and charged on the Revenue of India, have always been Trustee securities under the Trustee Act, 1893, (56 and 57 Vict., c., 53) now re-enacted as the Trustee Act, 1925. So long as the Secretary of State continues to borrow under the powers conferred on him by S. 315, his loans under the East India Stock Acts, would be trustee securities.

This section seeks to render the loan issues of the Federation Trustee Securities and for that purpose, these loans are rendered loans within the Colonial Stock Acts, 1877-1900 which were applicable only to the loans of Colonies. S. 2 of the Colonial Stock Act, 1900 rendered Colonial Stock issued under the Colonial Stock Acts, 1877-1900 trustee securities. S. 20 of the Act of 1877 permits a petition of right in the United Kingdom for enforcing the right of a person claiming right or title in the Stock. The Trustee (Scotland) Act, 1921 is an act in terms similar to the Trustee Act, 1893 defining the securities in which a trustee might invest, applying to Scotland.

Sub-Cl. 3, is consequential on the enactment of sub-S. (1) under which Federal loans are rendered trustee securities, and the repeal under this sub-section is on the ground of surplusage. In regard to the past loans the proviso safeguards the position.

Audit and Accounts.

166. (1) There shall be an Auditor-General of India, who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office:

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Federal Legislature varying or extending such an Order:

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the reveaues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

NOTES.

S. 166.--Describing the position under the Government of India Act, 1919, the Joint Parliamentary Committee said:

"At present, Audit in India, both Central and Provincial, is carried out by a staff under the Auditor-General. He is appointed by the Secretary of State in Council, who also frames rules defining his powers and duties. In India, Accounts and Audit are carried out by a combined staff, so that the Auditor-General has functions in relation to Accounts as well as to Audit. An experiment was tried in recent years in one Province of separating Accounts from Audit but was abandoned on the ground of expense. There is at present no constitutional provision requiring the report of the Auditor-General to be laid before the Legislature in India, though in fact this is done. Audit of the Accounts of the Secretary of State is carried out by the Auditor of Indian Home Accounts who, in accordance with S. 27 (1), Government of India Act, is appointed by the Crown by warrant countersigned by the Chancellor of the Exchequer. His report is by statute presented to Parliament. It has also been found convenient to use the services of the Home Auditor to audit expenditure by the High Commissioner."

Ss. 166 to 170 carry out the recommendation of the Joint Parliamentary Committee in para. 399 of their Report.

167. If a provincial Legislature after the expiration of two years from the commencement of Part III of this Act passes an Act charging the salary of an Auditor-General for that Province on the revenues of the Province, an Auditor-General of the Province may be appointed by His Majesty to perform the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed:

Provided that no appointment of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province.

(2) The provisions of the last preceding section shall apply in relation to the Auditor-General of a Province and his staff as they apply in relation to the Auditor-General of India and his staff, subject to the following modifications, that is to say—

(a) a person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India;

(b) in subsection (3) of the said section, for the reference to the Federal Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a reference to the Governor; and

(c) in subsection (4) of the said section for the reference to the revenues of the Federation there shall be substituted a reference to the revenues of the Province.

Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section.

NOTES.

S. 167.—Under sub-S. (3) of the previous section the Auditor-General of India performs Audit functions in relation to Provincial accounts also. The Joint Parliamentary Committee stated: "It is desirable both on grounds of economy and for other reasons that the present centralised system of Audit and Accounts should be maintained, and it is to be hoped that the Provinces will realise the advantages of such a course. Nevertheless, it would be difficult to withhold from an autonomous Province the power of taking over its own Audit and Accounts if it desires to do so, and we think that the Constitution must allow a Province to take this step subject to the following conditions. Long notice should be given of the change; a Provincial Chief Auditor should be appointed whose position would be no less independent of the Executive than that of the Auditor-General; a general form of accounts framed on the common basis for all the Provinces should continue to be available for such purposes as the consideration by the Federal Government of application for loans from Provincial Governments or proposals for the assignment of Revenues to Units of the kind mentioned in our earlier section on Federal Finance". (Para. 397.)

The restrictions enacted in this section on the Provinces taking over audit function carry out in full the recommendation of the Joint Parliamentary Committee.

168. The accounts of the Federation shall be kept in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

169. The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor-General, who shall cause them to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor

of the Province, who shall cause them to be laid before the Provincial Legislature.

170. (1) There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion and shall only be removed from office in like manner and on the like ground as a judge of the Federal Court.

(2) The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion:

Provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority or, of any Province, as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the prior sanction of the Governor-General in his discretion.

(4) The reports of the Auditor of Indian Home Accounts relating to such transactions as aforesaid shall be submitted to the Auditor-General of India, or, in the case of transactions affecting the revenues of a Province which has an Auditor-General, to the Auditor-General of a Province, and shall be included by any such Auditor-General in the reports which under this Part of this Act he is required to submit to the Governor-General or, as the case may be, to the Governor.

(5) The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.

(6) The salary, allowances and pension payable to or in respect of the Auditor of Indian Home Accounts shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

(7) His Majesty in Council may require the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which he performs in relation to India, and may fix the payments to be made in respect of his services from the revenues of Burma to the revenues of the Federation, and may make such incidental and consequential provision as may appear to him to be proper.

171. The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

CHAPTER III.

PROPERTY, CONTRACTS, LIABILITIES, AND SUITS.

172. (1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the Government of India shall as from that date—

(a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used and are certified by the Governor-General in Council or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of more advantageous disposal by sale or otherwise;

(b) in the case of lands and buildings which are situated in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act; and

(c) in the case of lands and buildings which are situated elsewhere than in India (except lands and buildings situate in Burma or Aden), vest in His Majesty for the purposes of the government of the Federation or, if they were immediately before the commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom.

(2) Except with the consent of the Governor-General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, or to any proposal for the diversion of any such lands and buildings to uses not connected with the discharge of the functions of the Crown in relation to India or Burma.

(3) The lands and buildings vested in His Majesty by virtue of this section for the purpose of His Majesty's Government in the United Kingdom shall be under the management of the Commissioners of Works, and, subject to the provisions of subsection (2) of this section, the provisions of the Acts relating to the Commissioners of Works shall apply in relation to those lands and buildings as if they had been acquired by the Commissioners in pursuance of those Acts.

(4) The provisions of this section shall apply in relation to the contents of buildings vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, other than any money or securities, as they apply in relation to the buildings themselves:

Provided that, in the case of such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General, the provisions of subsection (2) of this section shall not apply and, notwithstanding anything in subsection (3) of this section, the contents of those buildings shall be under the control of the Secretary of State.

(5) Any question which may arise within the five years next following the commencement of Part III of this Act as to the purposes for which any lands or buildings are by virtue of this section vested in His Majesty may be determined by His Majesty in Council.

NOTES.

S. 172.—The sections in this chapter correspond broadly to part III of the Government of India Act, 1915, (Ss. 28 to 32). Under the previous enactment property was vested in His Majesty for the purpose of the Government of India alone, and the Provinces had no personality of their own. With the inauguration however, of Provincial Autonomy and the conversion of British Indian Provinces into autonomous co-equal units in a Federation, juristic personality is conferred on the Provinces as well as on the Federal centre, which is reflected in the manner in which the property is vested in the Crown.

As in Canada, so here, Legislative power does not carry with it, proprietary rights in respect of the subject-matter. See *A. G. of Canada v. A. G. for Ontario*, (1898) A.C. 700. But where by the terms of this chapter property is vested in the Federation, Federal Legislative power is attracted to it; but subject always to Provincial Legislation in regard to property situated in a Province, save in so far as Federal Law otherwise provides. (See Item 10 List I, subject to a saving in respect of naval, military and air force works, which are subject to exclusive Federal Legislation; (Item (2));

The scheme of distribution of Crown Property as between the Federation and the Provinces follows in general the scheme of the British North America Act, under which the entirety of the Crown Property is vested in the Provinces, except such as were necessary to the Federation for the due performance of its Constitutional functions. (See *Liquidator's Case*, (1892) A.C. 437).

The general test adopted by the section for determining the vesting of the property in the Province or in the Federation is the *future use* of the property.

"The destination of property, the future ownership of property, shall be decided in accordance with the purposes for which the property will be used under the new regime, that is to say, if it is to be used for Provincial purposes it will belong to the Provincial Government or if under the new Constitution for central purposes it will belong to the Federal Government." (*Parl. Deb.* Vol. 302, Col. 529.)

CL (a) Sub-S. (1) may be analysed thus:

Prima facie all Crown property in a Province is vested in the Crown for the purpose of that Province.

Exception.—(1) Property actually being used on 1st April, 1937 for purposes which would under this Act be Central as distinguished from Provincial purposes.

(Provided that where the Government of India are in occupation of Provincial property as tenants, such property is not divested from the Province).

(2) Property which was at any time before 1st April, 1937 used or intended to be used for a purpose which would under this Act be Central (even though it was not being used for a central purpose on the 1st April 1937), provided that the Governor-General or the Crown Representative certifies that such property is (a) retained for such future use or (b) retained for the purpose of more advantageous sale, etc.

In cases falling within the exceptions the property would vest in the Federation or in the Crown Representative, according as the *past use* prior to 1st April, 1937 was for either a Federal purpose or a Crown purpose. (CL b).

Quære whether the certificate of the Governor-General or the Crown Representative is final as to the *past use*, or intended use, or is the finality confined to the necessity for the retention of the property for future use by the Central authorities. *Quære*

also whether, when the Governor-General or the Crown Representative certifies the property as retained for the purpose of an advantageous sale, the sale proceeds would not vest in the Province, as the retention by the Central authority is only temporary and for a limited purpose.

By the terms of Cl. (b) of sub-S. (1), the property excepted under Cl. (a) as stated above together with property outside Governors' Provinces are vested in the Federal Government or the Crown Representative in accordance with the *past use*..

Cl. (c) deals with property vested in His Majesty for the purpose of Government of India situated in England and its destination is provided for by sub-S. (3). This would for instance cover the High Commissioner's office buildings.

Sub S. (3).—“Sub-S. (3) refers to the destination of the “material structure”. Under the Act “the Secretary of State in Council”, as a corporate body, comes to an end, and these buildings being at present vested in that Corporate body, it is necessary to make provision for their destination. As it is contemplated that the India office under the reforms would become what is generally described as a Treasury Office, that is to say, an office administered in the same way as other offices in Whitehall, it is proposed that the building also should be treated in the same manner and should be vested in the Office of Works with the condition that, although it is so vested, it should only be used for the purposes of the Government of India”. (*Parl. Deb.* Vol. 302, Col. 966).

The control of the Federation over such property is provided for by sub-S. (2).

Sub-S. (5) ousts the jurisdiction of the Federal and other Courts from determining questions arising under this section for a period of five years from the commencement of Part. III.

173. (1) Subject to the provisions of this and the last preceding section, all property vested in His Majesty which by virtue of any delegation from the Secretary of State in Council or otherwise is immediately before the commencement of Part III of this Act in the possession or under the control of, or held on account of, the Governor-General in Council or any Local Government shall, as from the commencement of Part III of this Act, vest in His Majesty—

- (a) for the purposes of the Government of the Federation; or
- (b) for the purposes of the exercise of the functions of the Crown in its relations with Indian States; or
- (c) for the purposes of the Government of a Province, according as the purposes for which the property was held immediately before the commencement of Part III of this Act will thereafter be purposes of the Government of the Federation, purposes of His Majesty's Representative for the exercise of the said functions of the Crown or purposes of the Government of a Province:

Provided that—

(i) all moneys which immediately before the commencement of Part III of this Act were in the public account of which the Governor-General in Council was custodian shall be vested in His Majesty for the purposes of the Government of the Federation;

(ii) all credits and debits of the Local Government of any Governor's Province (other than Burma) in account with the Governor-General in Council shall be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

(2) Subject as aforesaid, all other property vested in His Majesty and under the control of the Secretary of State in Council immediately before the commencement of Part III of this Act shall as from the commencement of Part III of this Act vest in His Majesty for the purposes

of the Government of the Federation, for the purposes of the exercise of the functions of the Crown in its relations with Indian States or for the purposes of the Government of a Province, according as the Secretary of State may determine having regard to the circumstances of the case, and the Secretary of State shall have power to and shall deal with the property accordingly.

(3) In this section "property" includes money, securities, bank balances and moveable property of any description.

(4) Arrears of any taxes outstanding immediately before the commencement of Part III of this Act shall be deemed to be due to and may be recovered by the Federal Government or a Provincial Government according as the proceeds of any such tax imposed after the commencement of Part III of this Act would be due to and recoverable by the Federal Government or the Provincial Government.

(5) This section shall apply in relation to any equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma) as it applies in relation to property held for purposes which will be purposes of the Government of the Federation, but, save as aforesaid, nothing in this section applies to any property situate in Burma or Aden, or to arrears of taxes in Burma or Aden, or to any property which by virtue of any delegation from the Secretary of State in Council or otherwise is, immediately before the commencement of Part III of this Act, in the possession or under the control of, or held on account of, the Local Government of Burma or Aden.

(6) Nothing in this section shall affect any adjustments made or to be made by or under this Act by reason of the creation before the commencement of Part III of this Act of the Provinces of Orissa and Sind.

NOTES.

...S. 173.—S. 172 dealt exclusively with lands and buildings. This section enacts a similar provision in regard to all the other property defined in sub-S. (3) and the vesting in the different authorities is made to depend according as the purposes for which the property was held prior to the Act, would be Provincial, Federal or Crown purposes under this Act. In other words, all property shall continue to be used for the purposes to which it was put to before the Act; the authority to administer it is determined by whether that purpose is now a Provincial, Federal or Crown purpose and the property is accordingly vested in such authority. Sub-S. (1) deals with the property in the hands of the authorities in India, while sub-S. (2) relates to property in the actual control of the Secretary of State. In the first case, the property is distributed among the authorities by the Act itself in the manner set out before, but in the latter case, the Secretary of State is given power to determine their destination.

Sub-S. (1): **Proviso.**—"The second sub-section, or rather the proviso which is part of the first sub-section, deals with the question of existing cash resources and is merely a piece of machinery for providing that all existing cash resources are vested in the centre. Up till now the Central Government have often had to act as banker for Provincial Governments. It is necessary to arrange that these cash resources shall devolve on the Federal Government, so that all credits and debits of Local Governments on account shall be debited and credited to the corresponding Government in the Federation. It is a piece of machinery so that Governments entitled to cash resources shall have cash resources placed to their credit in an account." (*Parl. Deb.* Vol. 302, Col. 529).

For the definition of "corresponding Province" see S. 311 (2) *infra*.

The India and Burma (Transitory Provisions) Order 1937, Rule 5 provides as follows:—

For the avoidance of doubt it is hereby declared that so much of the Road Development Fund, and so much of the Fund for the Economic Development and

Improvement of Rural Areas, as remain in the hands of the Governor-General in Council immediately before the commencement of Part III of the India Act, will, notwithstanding anything in section one hundred and seventy three of that Act, continue to be held by him for the same purposes as theretofore.

Sub-S. (4).—The authority to collect the arrears of tax is to be the same authority as that to which under the Act, the tax in question would be due. In other words, if it were a tax in the Federal List, it would be the Federal authority, and if it were a tax in the Provincial List, a Provincial authority. But this provision has to be read with S. 143 (2), under which notwithstanding a tax being one in the Federal list, it would continue to be levied, collected and utilised by the Provincial and other authorities till Federal Legislation intervenes.

Sub-S. (5).—The last part concerns property in Burma and Aden which shall vest in the new Governments of Burma and Aden. All property held under the old regime by the Local Governments of Aden and Burma, with the exception of rifles and equipment of all purely Indian troops in Burma for which there is a special proviso, shall vest in the new Government." (*Parl. Deb.* Vol. 302, Col. 530).

174. Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a Province, vest in His Majesty for the purposes of the government of that Province, and shall in any other case vest in His Majesty for the purposes of the government of the Federation:

Property accruing by escheat or lapse, or as *bona vacantia*.

Provided that any property which at the date, when it accrued to His Majesty was in the possession or under the control of the Federal Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Federation or of a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the government of that Province.

NOTES.

S. 174.—This section corresponds generally to S. 31 of the Government of India Act, 1915. The absence of an express provision such as this gave rise to controversies in Canada, which went up to the Judicial Committee. See *Attorney-General v. Mercer*, 8 A.C. 767. This section carries out the principle enunciated in that decision that property in a Province accruing by lapse or escheat would vest in the Province and not in the Dominion. The vesting here is in the Federation, only if the property is not in a Governor's Province, i.e., if it is in a Chief Commissioner's Province.

The property must be "*situate*" in a Province before it can vest in His Majesty for its benefit. The situs of property is not easy to decide. Where the property consists of lands and buildings situate in a Province, the problem is easy. But when once this region is crossed, we are left in doubt and obscurity. A mortgage debt for instance has been held to be situate where the property secured is situate and not where the creditor resides. See *In re Hoyles*, (1911) 1 Ch. 179.

The situs in the case of debts, choses in action, negotiable instruments, and shares raises question more appropriate to a treatise on conflict of laws. (See *Dacey Conflict of Laws* and *Cheshire Principles of Private International Law*).

The doctrine of escheat and *bona vacantia* applies as much to artificial as to natural persons. Thus, it has been held that the equity of redemption belonging to a dissolved company, vests in the Crown as *bona vacantia*, and that the extinction of the company does not operate to free the mortgagor from liability. See *Re Wells, Swinburne Hanham v. Howard*, (1933) 1 Ch. 29 (C.A.).

175. (1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the Government of the Federation or of the

Power to acquire property and to make contracts. &c.

Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts:

Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold, nor any change made in the purposes for which it is being used, except with the concurrence, in his discretion, of the Governor-General or the Governor, as the case may be.

(2) All property acquired for the purposes of the Federation or of a Province or of the exercise of the functions of the Crown in its relations with Indian States, as the case may be, shall vest in His Majesty for those purposes.

(3) Subject to the provisions of this Act with respect to the Federal Railway authority, all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

NOTES.

S. 175.—The powers formerly vested in the Secretary of State in Council under S. 30 (of the Government of India Act, 1915) to enter into contracts relating to or otherwise deal with property vested in the Crown, and which were exercised by the authorities in India by virtue of a delegation from him, (see *Kasturi Beddi v. Secretary of State*, 26 M. 268, are now directly devolved on the Federal and Provincial Governments in respect of the property vested in each. The provisions are merely a reproduction of S. 30, and there is no difference except, (1) The source of the authority is traced to the Governments in India and (2) the form in which contracts, etc., would hereafter run.

176. (1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

(2) Rules of Court may provide that, where the Federation, the Federal Railway Authority, or a province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules.

NOTES.

S. 176.—The Federation and the Provinces are endowed with juristic personality, with a right to sue and be sued. It must however be noted that the creation of these separate entities is only for the purpose of legal proceedings; neither the imparting of

a juristic personality, nor the Crown holding property "in right of the Province" and "in right of the Federation" affords any scope for the doctrine of the multiple personality of the Crown.

The Crown is one and indivisible throughout the Empire, and in the words of Dr. Keith, "there is no essential deviation from this unity in the fact that the Crown appears in various aspects and that in these aspects there may be collision of interest and of rights". A Province may sue another Province, or a Province, the Federation and "to this extent there is distinction of aspects within the Crown." The King in each part of his dominions has a distinct personality for certain purposes, but the unity of personality can be given effect to whenever the aspect of personality is unimportant. (*Cf. Williams v. Howarth*, 1905 A.C. 551).

The essential unity of the Crown may thus be illustrated.

Priority of Crown Debts.—In *Oriental Bank Corporation* In re, 28 Ch. D. 643, Chitty, J., held that a Colonial Government was entitled to priority in a liquidation in England, on the ground that no distinction could be drawn between the Imperial Crown and the Crown in right of a Colony. In *In re Silver Brothers*, (1932) A.C. 514, the Privy Council held that in a bankruptcy in Quebec, where there were insufficient assets to discharge the dues of both the Province and of the Dominion, the two Governments ranked *pari passu*. Viscount Dunedin delivering the judgment of the Judicial Committee stated: "It is true there is only one Crown, but as regards Crown revenues and Crown property, by legislation assented by the Crown there is a distinction made between the revenues and property in the Dominion. There are two separate statutory purposes. In each the gathering and expending authority is different."

Crown bound by Legislation.—The Crown in right of the Federation is bound by a valid Provincial enactment assented to by the Governor as representing His Majesty. If the Crown is bound at all it is bound in all its aspects, and the question whether the Crown is bound is one of construction not of law. See Notes to S. 99.

Suits.—Suits between Provinces and between the Province and the Federation, are only a method of ascertaining the true meaning of the Constitution and does not affect the indivisibility of the Crown.

Positive aspect of S. 32. Moment's case.—This section reproduces with one material alteration the provisions of S. 32 of the Government of India Act, 1915, which conferred "the same right of suit against the Secretary of State as existed against the East India Company, if the Government of India Act, 1858 had not been passed". This provision was construed as affirmatively conferring a right of suit in all cases where the East India Company if it existed could have been sued and negatively as precluding an action in all cases where such a suit did not lie against the Company. The positive aspect of the section, was the basis of the decision of the Privy Council in the well known case of *Moment v. Secretary of State*, I.L.R. 40 Cal. 391, where their Lordships of the Judicial Committee held Burma Act IV of 1898 which deprived persons aggrieved of the right of suit was *ultra vires* as contravening the rights conferred by the section. (*Cf., Bhagchand v. Secretary of State for India*, I.L.R. 51 Bom. 725 at 748 (P.C.) for scope of the rule in *Moment's case*). By reason of the express provisions of this section which render the right of suit against the provincial and Federal Governments "subject to any provisions which may be made by Act of the Federal or Provincial Legislatures enacted by virtue of powers conferred on that Legislature by this Act," future legislation in India is saved from the restriction on legislative competence established by *Moment's case*. Existing Indian Legislation, however, if not re-enacted or validated by the new legislatures could be attacked as *ultra vires* on that ground.

Negative aspect.—In its negative aspect, it was held by the Indian High Courts, that before a person could bring a suit against the Secretary of State, he should show that a suit of the like character brought against the East India Co., before 1858 would have lain (*Cf., Rangachari v. Secretary of State for India*, 57 M. 857 at 889=67 M.L.J. 123). But Lord Roche delivering the judgment of the Judicial Committee in *Venkata Rao v. Secretary of State for India*, L.R. 64 I.A. 55=(1937) 1 M.L.J. 529 said:—"Their Lordships are

not disposed to think that this section relating to parties and procedure has an effect to limit or bar the right of action of a person entitled to a right against the Government which would otherwise be enforceable by action against it merely because an identical right of action did not exist at the date when the East India Company was the body if any to be sued. If it had appeared that the plaintiff's service under the Act of 1919 was not terminable at pleasure, their Lordships are not prepared to say that remedy by suit against the Secretary of State in Council for a breach of the contract of service would not have been available to the plaintiff. Breach of contract by the Crown can in England be raised by petition of right. The fact that for a different reason namely that service under the East India Company was at pleasure—a precisely similar suit could not have been brought against the company does not in their Lordships view conclude the matter either under Cl. (2) of S. 32 or on the reasoning of Sir Barnes Peacock in *P. & O. Steam Navigation Co. v. Secretary of State for India*, 5 B.H.C. R. (App.) 1." It is submitted that the practical effect of this decision is no more than to affirm the right of the Legislature to create statutory rights as against the Crown enforceable by action. In the absence of any statutory provision therefore, the questions propounded by the Indian decisions—Is the suit one which would lie against the Company as a trading Corporation, would still continue to be the material point for decision. (See *Secretary of State v. Cockcroft*, 39 Mad. 351). Cf. *Secretary of State for India v. Shreegobinda Chaudhuri*, 59 C. 1289).

Form of Suits.—S. 79 of the Civil Procedure Code enacts that suits by or against the Government shall be instituted by or against the Secretary of State for India in Council. To bring it in conformity with the changes enacted by this chapter and particularly this section, the Adaptation Order in Council has amended S. 79 in these terms.

"S. 79.—Subject to the provisions of Ss. 179 and 185 of the Government of India Act, 1935, in a suit by or against the Crown the authority to be named as plaintiff or defendant, as the case may be, shall be—

(a) in the case of a suit by or against the Central Government the Governor-General in Council before the establishment of the Federation of India, and thereafter, the Federation;

(b) in the case of a suit by or against a Provincial Government, the Province; and

(c) in the case of a suit by or against the Crown Representative, the Secretary of State."

As regards pending proceedings see S. 179 and notes thereto.

In regard to notices of suit S. 80 of the Civil Procedure Code has been amended as follows:

"S. 80.—No suit shall be instituted against the Crown, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, a Secretary to that Government;

(b) in the case of a suit against the Crown Representative, the Political Secretary;

(c) in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District and

(d) in the case of a suit against the Secretary of State, a Secretary to the Central Government, the Political Secretary and a Secretary to the Provincial Government of the Province where the suit is instituted

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

177. (1) Without prejudice to the special provisions of the next succeeding section relating to loans, guarantees and other financial obligations, any contract made before the commencement of Part III of this Act by, or on behalf of, the Secretary of State in Council shall, as from that date—

(a) if it was made for purposes which will after the commencement of Part III of this Act be purposes of the Government of a Province, have effect as if it had been made on behalf of that Province; and

(b) in any other case have effect as if it had been made on behalf of the Federation, and references in any such contract to the Secretary of State in Council shall be construed accordingly, and any such contract may be enforced in accordance with the provisions of the next but one succeeding section.

(2) This section does not apply in relation to contracts solely in connection with the affairs of Burma or Aden, or solely for purposes which will after the commencement of Part III of this Act be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

NOTES.

S. 177: Transference of Rights and Obligations under contracts.—All contracts by or with the Government heretofore made have been under S. 30, expressed to be made by or with the Secretary of State for India in Council. This section provides for the transference of the rights and obligations under such contracts to the newly constituted functionaries—the Province, the Federation and the Crown Representative. The test for distributing the contracts among the several authorities is the same as that adopted in respect of other species of property, etc., viz.: 'Is the purpose of the contract one which under this Act, is a purpose of the Government of the Province, of the Federation or of the Crown Representative?'

178. (1) All liabilities in respect of such loans, guarantees and other financial obligations of the Secretary of State in Council as are outstanding immediately before the commencement of Part III of this Act and were secured on the revenues of India shall, as from that date, be liabilities of the Federation and shall be secured upon the revenues of the Federation and of all the Provinces.

(2) All enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as aforesaid shall, in relation to those loans, guarantees and obligations, continue to have effect with the substitution therein, except in so far as the context otherwise requires, of references to the Secretary of State for references to the Secretary of State in Council, and with such other modifications and such adaptations as His Majesty in Council may deem necessary.

(3) No deduction in respect of taxation imposed by or under any existing Indian law or any law of the Federal or a Provincial Legislature shall be made from any payment of principal or interest in respect of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act, have fallen to be made by the Secretary of State in Council.

(4) If in the case of any Local Government in India there are outstanding immediately before the commencement of Part III of this Act any loans or other financial obligations secured upon the revenues of the Province, all liabilities in respect of those loans and obligations shall, as from that date, be liabilities of the Government of, and shall be secured upon the revenues of, the corresponding Province under this Act.

(5) Any liabilities in respect of any such loan, guarantee or financial obligation as is mentioned in this section may be enforced in accordance with the provisions of the next succeeding section.

(6) The provisions of this section apply to the liabilities of the Secretary of State in Council in respect of the Burma Railways three per cent. Debenture Stock, but, save as aforesaid, do not apply to any liability solely in connection with the affairs of Burma or Aden.

NOTES.

S. 178.—A special provision is made by this section for the devolution of the existing obligations of the Secretary of State in Council in respect of his borrowings, etc. They are charged on the Revenues of the Federation and of all Provinces (sub-S. (1)) and the Secretary of State continues to be liable therefor. The money for meeting the Secretary of State's obligations have to be supplied by the Federation and the Provinces (S. 157 (1) *supra*).

Sub-S. (3).—This enacts a restriction on the powers of the Indian Legislature to levy any tax on existing Indian Government Sterling Securities issued by the Secretary of State, which seems to be more a concession to the British treasury than to the British holder of the Security, as the interest is liable to British Income-tax and the capital to British Succession Duty.

Sub-S. (4).—This sub-section adopts the same principle of distribution as regards borrowings on the security of the Revenues of the Province, as that in regard to the distribution of other property, etc. For the definition of "corresponding province" see S. 311 (2).

179. (1) Any proceedings which, if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of Part III of this Act or arising under any contract or statute made or passed before that date, be brought against the Federation or a Province, according to the subject matter of the proceedings, or, at the option of the person by whom the proceedings are brought, against the Secretary of State, and any sum ordered to be paid by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred in or in connection with the defence thereof, shall be paid out of the revenues of the Federation or the Province, as the case may be, or, if the proceedings are brought against the Secretary of State, out of such revenues as the Secretary of State may direct.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as is mentioned in those provisions as they apply in relation to the contracts so mentioned.

(2) If at the commencement of Part III of this Act any legal proceedings are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council, and the provisions of subsection (1) of this section shall apply in relation to sums ordered to be paid, and costs or expenses incurred, by the Secretary of State or the Secretary of State in Council in or in connection with any such proceedings as they apply in relation to sums ordered to be paid in, and costs or expenses incurred in or in connection with the defence of, proceedings brought against the Secretary of State under the said subsection (1).

(3) Any contract made in respect of the affairs of the Federation or a Province by or on behalf of the Secretary of State after the commencement of Part III of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State and any such proceedings may be brought

accordingly, and any sum ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred by the Secretary of State in or in connection therewith, shall be paid out of the revenues of the Federation or the Province, as the case may be.

(4) Nothing in this section shall be construed as imposing any liability upon the Exchequer of the United Kingdom in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or against the Secretary of State by virtue of this section, or as derogating from the provisions of subsection (1) of the last preceding section.

(5) This section does not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden, other than liabilities which are by this Act made liabilities of the Federation, or to contracts or liabilities for purposes which will, after the commencement of Part III of this Act, be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

NOTES.

S. 179.—This section is an application to the existing contracts of the Secretary of State in Council, of the familiar principle in the law of Contracts, that the remedy of a party against the original promisor is not prejudiced or lost by reason of an assignment by the latter to which the other is not a consenting party. The option is therefore given to persons claiming by virtue of contracts, etc., prior to the commencement of Part. III to sue either the Secretary of State the original contracting party—or the Federation or the Province according as the authority to whom the contract would relate under the provisions of this Act.

Having a right of suit against two alternative parties, it would appear—that the plaintiff cannot join both of these in the same action. Cf., *Scarf v. Jardine*, 7 A.C. 345. If the suit is laid against one party the plaintiff having finally elected his remedy against that one, he cannot thereafter claim to abandon that course and seek to proceed against the other—for the election once made is final. This rule would rest on the broad ground of the doctrine of election and it would not be affected by the earlier action not proceeding to a final decision on the merits.

Where a decree is passed against the Secretary of State, the result is the same so far as the adjustment between Federal and Provincial Revenues are concerned, and the allocation between them is made by the Secretary of State. Sub-S. (1).

Sub-S. (2).—This applies to pending proceedings and enacts a statutory substitution of the Secretary of State for the Secretary of State in Council, and the provisions of sub-S. (1) in regard to the power of the Secretary of State to allocate the expenses, costs, etc., to the two Revenues are applied to these proceedings.

Sub-S. (3).—This applies to the future contracts of the Secretary of State in England and sub-S. (4) is framed *ex abundanti cautela* and is consequent upon the substitution of 'the Secretary of State' for 'the Secretary of State in Council.'

180. (1) Any contract made before the commencement of Part III of this Act by or on behalf of the Secretary of State

Contracts in connection with functions of Crown in its relations with Indian States.

in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States shall, as from the commencement of Part III of this Act, have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly.

(2) Any proceedings which if this Act had not been passed might have been brought by or against the Secretary of State in Council in respect of any such contract as aforesaid may be brought by or against the Secretary of State and if at the commencement of Part III of this Act any

proceedings in respect of any such contract are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council.

(3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such a contract as would have been legally enforceable by or against the Secretary of State in Council, be legally enforceable by or against the Secretary of State.

(4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are mentioned in this section and any costs or expenses incurred by him in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

NOTES.

S. 180.—This section gives effect to the theory put forward by the Princes before the States Enquiry Committee and accepted by them that treaties of the Indian States were with the Crown of England as such and not with the Government of India. It would serve no useful purpose to canvass the arguments put forward on behalf of the princes in support of their views on the interpretation of Ss. 1 and 132 of the Government of India Act 1915 as the express enactment by this Act has placed the matter beyond the region of controversy.

Sub S. (4).—*Of.*, Ss. 145, 146 and S. 33, (3) (f).

PART VIII. THE FEDERAL RAILWAY AUTHORITY.

Executive authority
in respect of railways
to be exercised by
Federal Railway
Authority.

181. (1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

(2) The said executive authority extends to the carrying on in connection with any Federal railways such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings:

Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be performed by persons independent of the Authority and of any railway administration.

So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.

NOTES.

S. 181: Date of Commencement of Part VIII.—Rule 3 (2) of the (Government of India (Commencement, etc.) Order 1936 provides that Part VIII and the Eighth Schedule shall come into force on such dates as His Majesty in Council may hereafter appoint; and this Part has not been brought into force.

The Statutory Railway Authority.—The control of Railway administration, is not a reserved department. It was however made clear that just as in the case of Finance, the constitution of a Reserve Bank, free from political influence in the determination of its policy, especially in the field of currency was made a condition of the transfer of Finance, so the creation of a Statutory Railway authority, similarly free from political influence for the actual administration of the Railways, was indicated to be necessary before Railways could be transferred to Ministerial control. The White Paper 1933, stated that "His Majesty's Government consider that it will be essential, that while the Federal Government and Legislature will necessarily exercise a general control over Railway policy, the actual control of the administration of the State Railways in India, (including those worked by companies) should be placed by the Constitution Act in the hands of a Statutory body, so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles and without being subject to political interference". Introduction Para. 74.

The Secretary of State appointed a Committee in 1933 to investigate into the matter and report on the future administration of Railways. It met in London in June, 1933. Ss. 181 to 199 and Schedule VIII embody mostly the recommendations of that Committee, which were endorsed by the Joint Parliamentary Committee, with some variations.

The Federal Railway Authority.—The executive authority of the Federation which comprehends the subject of Federal Railways (Item 20), vests in the Governor-General (S. 7) only "subject to the Provisions of this Act", and S. 181 is one of such provisions. The executive authority of the Federation which flows from the enumeration of 'Federal Railways' in the Legislative list is so to speak bifurcated between the Governor-General and the Federal Railway Authority. The executive power in regard to regulation, construction, maintenance and operation of Railways are statutorily divested from the Governor-General, the normal executive authority, and vested in the Federal Railway Authority created by the Act. All other executive powers including the determination of "questions of policy" inhere in the Federal Government. Further under Sub-S. (3) the Federal Government is the 'safety controlling authority'.

The Constitution of the Railway Authority is prescribed by Schedule VIII, which is liable to alteration or repeal at the hands of the Federal Legislature (subject to, a bill for the purpose, obtaining the previous sanction of the Governor-General) except the provision in S. 182 (1).

Railway is defined in S. 311 (2) "as including a Tramway not wholly within a Municipal Area", but from the definition of Federal Railway and Indian State Railway it would be clear that the expression includes all Railways in India.

Auxiliary Services: Sub-S. (2).—Explaining the need for this Sub-section it was stated in the House of Lords.

"The object of it is to enable the Federal Railway Authority to continue to carry on matters ancillary to the actual running of the Railways, as is done at the present time. As an example of this, the Railways may run road services as well as the actual Railways, or they may enter into agreements with other organisations to run road services in connection with other Railways; and in some cases at the present time the Railways work collieries for the purpose of supplying their needs in fuel. The object is to make it clear, that the Federal Railway Authority will have the same power of carrying on operations of that kind". (*Par. Deb. House of Lords*, Vol. 97, Cols. 1242-43) Cf., S. 51 A. of the Indian Railways Act.

Federal Railway Authority is defined as excluding an Indian State Railway.

Sub-S. (3).—"It will obviously be the primary duty of the Railway Administration to see that passengers are carried safely, and so on, but it will be an additional duty of the Federal Government to insist upon proper precautions being taken". (*Par. Deb.* Vol. 300, Part 70 Col. 30.)

The functions discharged by the Federal Government under this sub-section would be those which under Chapter II of the Indian Railways Act, are discharged through the Inspector of Railways, on the lines of the Board of Trade in England.

182. (1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

Composition, &c. of
Railway Authority.

(2) Subject as aforesaid, the provisions of the Eighth Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to incometax:

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

NOTES.

S. 182.—In speaking of the Composition of the Railway Authority under Schedule VIII, *Mr. Butler* said: "The matter of the constitution of the Federal Railway Authority was discussed at great length by a Committee consisting of eminent representatives of railways in this country, distinguished Indian statesmen and representatives of public opinion. The evidence is set out on page 232, as Appendix 4 to that part of the Report of the Joint Select Committee. It was their opinion that this Federal Railway Authority should be constituted in this way, and they made special reference to the particular provisions upon which Hon. Members have asked questions. They referred in particular to a person who had been a servant of the Crown in India, or a railway official, and considered that within a period of one year of their having held their last posts, they should not be members of the Railway Authority. The Federal Railway Authority is the great board of management of this vast net work of railway systems all over India, and it has been thought that as far as possible it should be free from any political influence or ties.

"It was thought desirable to lay down these provisions for its Constitution and the Federal Railway Authority is as explained in paras. 10, 11 and 12 and so forth in the Schedule. Provision is made there for the executive staff of the authority, the Railway Commissioners. Take the case of an official. It has been thought wise that if an official is retained in the service of the Indian railways in a high capacity, his best place would probably be on this staff in the very important post of a railway commissioner, and that the Federal Railway Authority, which is the board of management, should include membership subject to these limitations.

"With regard to men who have been in the service of the Crown in India, at first sight it would seem suitable that they should be put on the Authority if they are suitable candidates; but there is the limitation of a year, and after the period of 12 months it is possible for a man who has been in the service of the Crown in India or has been a railway official to be put on the Railway Authority". (*Parl. Deb.* Vol. 301, Col. 1611.)

183. (1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

Directions and
principles to be
observed by Railway
Authority.

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, the decision of the Governor-General in his discretion shall be final.

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect to railways as they apply in relation to the functions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

NOTES.

S. 183: Railways as a public utility commercial undertaking.—The separation of Railway Finance in 1924 was in part directed to maintain the Railways as a public utility commercial undertaking, which would provide a fair return to the general tax-payer on the amount invested on it—about Rs. 600 crores being about 60 per cent. of the public debt of India. (Cf., Recommendations of the Incheape Committee).

The interest of the tax-payer is safeguarded by the Authority being directed to act on business principle; and as a public utility concern, the other interests of agriculture, industry and commerce and the general public are also, to be had in view, subject always to the overriding interest of a "fair return" to the taxpayer.

In this connection the provisions of the Union of South Africa Act relative to the Constitution of the Railway Board, and the manner in which the Board are to perform their functions in the administration of Railways afford an instructive parallel.

S. 126 provides: "Subject to the authority of the Governor-General in Council, the control and management of railways. . . . of the Union shall be exercised through a board consisting of not more than three Commissioners who shall be appointed by the Governor-General in Council and a Minister of State, who shall be the chairman.

S. 127. "The Railways of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the union and promotion by means of cheap transport of the settlement of an agricultural and industrial population in the inland portion of all Provinces of the union. So, far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital, not being capital contributed out of Railway Revenue. The amount of interest due on such capital invested shall be paid over from the Railway fund into the consolidated Revenue Fund."

Sub-S. (3).—This enjoins on the Federal Government the observance of the same principles which are to guide the activities of the Railway authority.

Sub-S. (4).—The Federal Railway Authority being as it were an *imperium in imperio*, the same discretion and special responsibilities which attach to the Governor-General as the executive authority of the Federation are made applicable in this field also. In other words the executive authority of Federation which is vested in the Federal Railway Authority in respect of the matter specified in sub-S. (1) of S. 181, is divested not so much from the Federal Government as from the Federal Ministry.

Conduct of business between Railway Authority and Federal Government.

184. (1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve, any special responsibility of the Governor-General.

NOTES.

S. 184.—Cf. S. 17 (3) and (4) read with sub-S. (5).

Acquisition and sale of land, contracts and working agreements.

185. (1) Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.

(2) Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of the Federal Legislature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued:

Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.

(3) The Authority may make working agreements with, and carry out working agreements made with, any Indian State or person owning or operating any railway in India, or in territories adjacent to India, with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

NOTES.

S. 185.—The Federal Railway Authority is a body corporate and may sue and be sued. Sch. VIII r. (1).

Sub-S. (3).—Territories adjacent to India.—Compare the Pondicherry Railway Company operated by the South Indian Railway Company under an agreement of 1890 (see *Pondicherry Railway Company v. Commissioner Income-tax Madras*, 61 M.L.J. 251: 54 Mad. 691).

Finance of the Railway Authority.

186. (1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund:

Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

(2) The receipts of the Authority on revenue account in any financial year shall be applied in—

- (a) defraying working expenses;
- (b) meeting payments due under contracts or agreements to railway undertakings;
- (c) paying pensions, and contributions to provident funds;
- (d) repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act on those revenues as is attributable to service on railways in India;
- (e) making due provision for maintenance, renewals improvements and depreciation;
- (f) making to the revenues of the Federation any payment by way of interest which they are required by this Part of this Act to make; and
- (g) defraying other expenses properly chargeable against revenue in that year.

(3) Any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this subsection shall be transferred accordingly and shall form part of the revenues of the Federation.

(4) The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

NOTES.

S. 186.—This section embodies the principle of the separation of Railway finance effected in 1924 by a resolution of the Assembly.

Sub-S. (3).—This continues the resolution of Sept. 1924 in regard to Railway contribution to the General finances until the same is altered by the Federal Government. It might be noted that the contributions on this basis form an integral part of the provision for the allotment to the Provinces of their share of the income-tax under the Distribution of Revenues Order in Council 1936, issued under S. 138 of the Act.

Under the resolution of Sept. 1924, the General Revenues are to receive (1) a contribution of 1 per cent. of the capital at charge of commercial lines in the penultimate year, plus. (2) One fifth of the surplus profits in that year after deducting the above (see Item (f) sub-S. 2 *supra*) plus. (3) One third of the excess over 3 crores of such amount as may be available for transfer to Railway reserves of the current year, after meeting the losses on Strategic Railway lines (which loss comes to about 1½ crores a year).

As stated already, the capital of the Railways is roughly about 600 crores rupees and the 1 per cent. under the first para. would come to about Rs. 6 crores per year.

187. (1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of this Act, out of the revenues of India or

Provisions as to certain obligations of the Railway Authority.

of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined.

For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as shown in the accounts of the Government of India immediately before the establishment of the Authority.

Nothing in this subsection shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs, or expenses in, or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India.

(3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on Federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

NOTES.

S. 187.—The capital expenditure on Railways incurred by the Government of India is treated as a debt due by the Federal Railway Authority; thus adopting ordinary commercial accounting principles.

As to payment of interest Cf., Item (f), of sub-S. (2) of previous section.

188. Subject to such conditions, if any, as may be prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them.

NOTES.

S. 188.—Cf., Rule 16 of Sch. VIII as to custody of their monies.

189. (1) Nothing in the foregoing provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in Council on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by them, but the Authority may from time to time require the transfer to themselves of so much of any such fund as they require to defray expenditure chargeable against that fund, and the Federal Government shall credit each such fund with interest on the untransferred balance thereof at such rate as may be agreed, or, in

Investment of funds of Railway Authority.

Special provisions as to certain existing funds.

default of agreement, determined by the Governor-General in his discretion

(2) In this section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma.

NOTES.

S. 189.—This section is designed to prevent dislocation of the Finances of the Government of India.

190. (1) The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India.

(2) The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

191. The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee.

NOTES.

S. 191.—The present Railway Rates Advisory Committee which merely advises the Railways as to the fairness of the rates is continued under this section. The Acworth Committee recommended the creation of a new tribunal practically identical with the Railway Rates Tribunal under the English Railways Act, 1921. They suggested that it might consist of a lawyer chairman and two lay members—one representing the railways and the other Commercial interests. In England however the problem of Railway rates is not mixed up with the interests of the general tax-payer; for there the Railways are company owned. In a system of State-owned lines it would be open to question whether there was room for an independent tribunal to determine "Standard rates" in relation to "Standard Revenue." With the definite obligation laid on the Railway Authority to run the concern on "business principles" and win a return on the capital the erection of a tribunal for fixing rates would hardly seem to be consistent.

The Railway Rates Advisory Committee have been empowered to investigate and make recommendations on,

- (1) complaints of undue preference.
- (2) complaints that rates are unreasonable in themselves.
- (3) complaints or disputes in respect of terminals, S. 46 of the Railways Act.
- (4) The reasonableness or otherwise of any conditions as to packing of articles specially likely to damage in transit or liable to cause damage to other merchandise.
- (5) complaints in respect of conditions of packing attached to a rate.
- (6) complaints that Railways do not fulfil their obligations to provide reasonable facilities under S. 42 (3) of the Indian Railways Act.

Bills and amendments for regulating rates and fares to require recommendation of Governor-General.

192. A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General.

NOTES.

S. 192.—A rate or fare is treated on the same footing as a tax. Cf., S. 37 (1).

193. (1) It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding, and delivering of through traffic at through rates, and as to secure that there shall be between one railway

Obligation of Railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination, etc.,

system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition.

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding sub-section have not been complied with shall be made to and determined by the Railway Tribunal.

NOTES.

S. 193.—Cf., S. 42 (1) (2) Indian Railways Act.

Disputes under this head would in England fall within the jurisdiction of the Railway and Canal Commission.

The complaints referred to in the 2nd sub-section are those by Indian States, and the Authority against each other. These are enquired into by the Railway tribunal—erected under S. 196.

But if a similar dispute were raised by a citizen it would be heard by the Rates Advisory Committee under S. 191.

194. If the authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, or

Appeal by State to
Railway Tribunal
from certain direc-
tions of Railway
Authority,

maximum or minimum rates and fares, or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

NOTES.

S. 194.—The Railway Tribunal has been constituted for deciding disputes between Federated States and the Railway Authority, arising under S. 193, 194 and 195.

"The idea of the section was that in the event of disputes arising between the Railway Authority which controls the railways of British India and any railways in an Indian State controlled either by that State or by the authority in the State should be settled in the last resort by the Railway Tribunal.

"If the Authority, in the exercise of what is conferred on it by the Act, namely, the executive authority of the Federation in respect of railways should give any direction to the Federated State in relation to such matters as the interchange of traffic, the maximum or minimum rates and fares, or station or service terminals, then the State, if it feels that those directions are unfair or are such as ought not to be given on the ground that they will discriminate unfairly against the State, may complain and the complaint will be determined by the Railway Tribunal. A State railway may feel that some arrangements in regard to external charges or interchange of traffic with British India lines were unfair, having regard to the Federal charges or arrangements affecting the various systems. If they have a grievance of that kind it is right that they should be able to go to the Railway Tribunal to ascertain whether or not their grievance is just. (*Parl. Deb.* Vol. 300 Col. 1437).

195. (1) The Governor-General acting in his discretion shall make

Construction and
reconstruction of
railways.

rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of any proposal for constructing a railway or for altering the alignment or gauge of a railway,

and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question

whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

NOTES.

S. 195.—Explaining this section it was stated in Parliament: "The Section deals with a very important matter, namely, the construction and reconstruction of Railways. Where you have as you have in most countries, and as you have in India, systems covering to some extent the same sort of area and there is a proposal to construct a new line, it may well be that an existing system feels that that new line is really unnecessary or, at any rate, that if there is to be a new line in that area it would be better in the general interests of transport that it should be constructed in some direction other than in that which is proposed. For instance, the management of one system may say: 'If you construct the new line there it will unfairly compete with what may be the slightly longer route which we have between these two points, but it is really uneconomical to spend this money to save half an hour or an hour in getting from A to B when you might perfectly well get from A to B by using the existing lines, some of which belong to us.'"

"There might be a new line proposed in some area where there is no railway at present, as to which no questions could arise, but it might well be that the proposed new line would affect the interests of an existing system. As I have said, there may be two points, A and B. At present traffic from A to B goes round through system A. The suggestion is to make a rather more direct line from A to B, which will prejudice the interest of system A. System A would therefore have a case, which certainly ought to be heard, for saying that although half an hour might be saved by constructing the new route between the two points it is not really an economic proposition, having regard to the general interests of the railways, of the country as a whole.

"The 1st sub-section prevents one side or the other getting a proposition under way without the knowledge of the other system which may be interested. The second sub-section provides that the rules shall contain provisions enabling objections to be launched by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a federal railway or a State railway, as the case may be. That is to say, in the case that I have tried to describe one system might feel that the construction of the new railway was really unfair having regard to its own existing reasonable and satisfactory facilities. There are proposals that notice should be given so that objections can be lodged, and the matter referred to the Railway Tribunal. In sub-S. (3) the Committee will see that this is not allowed in any case, where the Governor-General in his discretion regards any new line it is proposed to construct as necessary for defence purposes. That is a proper exception, because the Governor-General, having the responsibility for defence, must be able to say whether such a railway is necessary for defence purposes". (*Parl. Deb.* Vol. 300, Cols. 1439-40).

196. (1) There shall be a Tribunal (in this Act referred to as "the Railway Tribunal, Railway Tribunal") consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

(2) The President shall be one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period:

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or Authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

(8) There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues.

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

NOTES.

S. 196.—Explaining the constitution of the Tribunal it was stated: "This tribunal will have important matters to decide. They will have to decide on the facts of any dispute which may be brought before it and, therefore, it is advisable that the President should be a Judge of the Federal Court. The other two will not be representatives of each side, but will be persons who will be selected by the Governor-General in his discretion from a panel of eight persons with railway knowledge or business experience. We feel that such a Constitution will result in a tribunal which should inspire the confidence of those who will take their disputes before it". (*Parl. Deb. Vol. 300, Col. 1442*).

197. (1) Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.

Rights of railway companies in respect of arbitration under contracts.

(2) If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the matter in dispute is of such a nature that under the contract the company might require, or, but for some provision of this Act, might have required, it to be submitted to arbitration, the dispute shall be deemed to have arisen between the company and the Secretary of State, and the provisions of the contract relating to the determination of such a dispute shall have effect with the substitution of the Secretary of State for the Secretary of State in Council.

Any award made in an arbitration under the foregoing provisions of this section and any settlement of the dispute agreed to by the Secretary of State with the concurrence of his advisers shall be binding on the Federal Government and the Authority, and any sum which the Secretary of State may become liable or may so agree to pay by way of debt, damage or costs, and any costs or expenses incurred by him in connection with the matter, shall be paid out of the revenues of the Federation and shall be charged on those revenues but shall be a debt due to the Federation from the Authority.

NOTES.

S. 197. - The Solicitor-General explaining the section stated,—"S. 197 is meant to deal with the case where there is an existing contract between a railway company in India and the Secretary of State in Council, with an arbitration clause. It is necessary to adjust that position to the position as it will be under the Act. The section makes the necessary adjustment in the simplest form. The dispute is deemed to have arisen between the Company and the Secretary of State, instead of the Company and the Secretary of State in Council. Then the arbitration takes place between the company and the Secretary of State, and the award is binding on the Federation". (*Parl. Deb.* Vol. 302, Col. 980).

198. If and in so far as His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

NOTES.

S. 198.—Non Federating States cannot have the advantage of the Railway Tribunal for deciding their disputes with the Railway authority, but would have to rely on representations to the Crown Representative.

199. Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

Official directors of Indian railway companies.

PART IX. THE JUDICATURE.

CHAPTER I. THE FEDERAL COURT.

200. (1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His

Establishment and Constitution of Federal Court.

Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years:

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor-General resign his office:

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

(a) has been for at least five years a judge of a High Court in British India or in a Federated State;

(b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or

(c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession:

Provided that—

(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader; and

(ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

NOTES.

Federal Court.—"A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the Constituent units of the Federation." J.P.C. Report. So much so that when in the event of a general break-down of the Constitutional machinery, the Governor-General is empowered to assume to himself all or any of the powers vested in the several Federal authorities, he is precluded from assuming to himself any of the powers vested in or exercisable by the Federal Court, and he cannot suspend either in whole or in part the operation of any provision of this Act relating to the Federal Court.

Although Part III of the Act together with the distribution of powers between the Provincial and the Central Legislature under Part V, comes into force from 1st April, 1937, the Federal Court begins to function only from 1st October, 1937.

Strength of the Court.—The number of Judges now appointed, *viz.*, three, is the minimum with which the Court can function. See S. 214 (2). The increase in the number of Judges beyond six, would presumably take place in the event of the Federal Legislature conferring an extended appellate jurisdiction on the Court under S. 206.

Removal of Judges.—The rule of Judicial tenure throughout the Dominions is, in principle, good behaviour; but the power to remove is conferred either on the Crown, or on the Crown Representative in the territory exercisable on an address from the local legislature. Thus under S. 99 of the British North America Act, the Judges of the superior Courts are removable on an address from the two Houses by the Governor-General. In the Commonwealth of Australia, the Judges are removable by the Governor-General in Council on an address from both Houses praying for such removal on the ground of proved misbehaviour or incapacity. But it is to be noted that in both these cases the Judges are appointed by the Governor-General, *i.e.*, the Local executive.

The Act makes no provision for the appointment of a temporary or acting Judge of the Federal Court, though provision is made for temporary appointment of acting Chief Justice, (S. 202). Until the strength of the Court is raised above the minimum of three, therefore, it would seem that the Court must cease to function in the event of any Judge being by 'reason of absence, or for any other reason, unable to perform the duties of his office'. Cf., S. 222 (2) *infra*.

Sub-S. (3): Qualifications.—A Judge of a High Court, who is a member the Indian Civil Service, would be eligible for appointment as Federal Judge under cl. (a); but by reason of the proviso (i) to sub-S. (3) cannot be appointed as Chief Justice of India, unless he is a Barrister at the time of his first appointment to Judicial office.

201. The judges of the Federal Court shall be entitled to such salaries, Salaries, etc., of and allowances, including allowances for expenses judges. in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

NOTES.

S. 201.—The salaries, allowances and pensions payable to or in respect of Judges of the Federal Court are charged on the revenues of the Federation under S. 33 (3) (d) and are therefore not votable by the Legislature.

By Order in Council the salary of the Chief Justice has been fixed at Rs. 7,000, per month and that of the puisne Judges at Rs. 5,500 per month.

202. If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other Judges of the Court as the Governor-General may in his discretion appoint for the purpose.

NOTES.

S. 202.—Cf., S. 222 as regards the High Court and see notes to S. 200, *supra*.

203. The Federal Court shall be a Court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

NOTES.

S. 203.—Delhi is the seat of the Court fixed by the Act. The Court might sit in such other places as the Chief Justice fixes, with the approval of the Federal Government.

204. (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other Court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

NOTES.

S. 204: Original Jurisdiction of Federal Court. —S. 75 of the Commonwealth of Australia Act confers on the High Court of Australia, which is the Federal Supreme Court for the Commonwealth, jurisdiction in all matters *inter alia* "between States, or between residents of different States or between a State and a resident of another State" which is founded on a somewhat similar provision in the American Constitution (Art. III S. (1)) by which "the judicial power shall extend to controversies between two or more States, or between a State and citizens of another State, or between citizens of different States. . . ." But under this Act the Original Jurisdiction of the Federal Court is confined to cases where the parties before it are the "units" of the Federation — or the units and the Federation. The Provinces and the Federation it has already been noticed, have been endowed with juristic personality, with capacity to sue and be sued. (See S. 174). The jurisdiction thus conferred is exclusive and it must be so, for the Federal Court is the only Judicial Tribunal common to the entire Federation, and no Court of any "unit" can have jurisdiction over another "autonomous" unit. But this exclusive jurisdiction, in disputes between units is subject to two exceptions, (i.e., (a) where an *ad hoc* advisory tribunal is erected for deciding 'inter-unit' disputes regarding interference with water from natural sources of supply (S. 133) and (b) where the Railway Tribunal erected under S. 196 has jurisdiction over the disputes mentioned in Ss. 193, 194, and 195 of the Act (See S. 196 (7).)

The jurisdiction thus conferred is compulsive and is not dependent on the consent of the defendant "unit".

Jurisdiction means "the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its

decision. (*Hals. Laws of England*). The words of Higgins, C.J., in *South Australia v. Victoria*, (12 Com. L.R. 667) speaking of the High Court of Australia are apt to describe the position of the Federal Court under this Act. He said: "The Law of the Empire including the Statute Law is binding as well upon dependencies regarded as political entities, as upon individual subjects. If therefore a dependency infringes the law of the Empire governing its relations with a neighbouring dependency, it is guilty of a wrong towards that other dependency. Similar wrongs committed by one independent State against another are not justiciable, because there is no tribunal which has jurisdiction to take cognisance of them. But if there is a tribunal which has jurisdiction to summon a dependency before it, there is no reason why such a wrong should not be redressed. This Court has such a jurisdiction."

To attract the jurisdiction of the Federal Court there must be a *dispute* between one or more of the "units" or between a "unit" or units and the Federation. A dispute arises where there is a demand by one unit which is refused by the other.

The *Solicitor General* stated: "If the dispute does involve a matter of legal right, it is a proper dispute to take to the Federal Court, and 'matter of mere legal right' are very apt words for providing generally the category of disputes which should properly be taken to the Court. The idea behind this section is that if you have a dispute between two Provinces or between the Federation and Province or a Federated State, it is not desirable that that should be litigated in the Court of one of the disputing parties". (*Parl. Deb.* Vol. 300, Col. 115.)

A dispute involving any question on which "the existence or extent of a legal right depends" is equivalent to the expression 'justiciable right', in Public International Law. It would therefore include and be confined to demands resting upon an alleged violation of some positive law to which the parties are subject and which governs their relations and constitutes the measure of their respective rights and duties. As Griffith, C.J., said in *South Australia v. Victoria*, (12 Com. L.R. 667), "A matter in order to be justiciable must be such that a controversy of like nature could arise between individual persons and must be such that it can be determined upon principles of law". According to Lord Loreburn in *Dominion of Canada v. Ontario*, (1910 A.C. 637, 647); "The test of a matter being justiciable is can it be sustained on any principle of law that can be invoked as applicable?" The expression "legal right" would it would seem, also include equitable rights." Cf., *Warren v. Murray*, (1894) 2 Q.B. 648.

But where the claim is not supported by any law binding the parties but is dependent on political, as distinguished from judicial considerations merely it is not justiciable and the Court would have no jurisdiction. Nor can the Court be called on to decide abstract or hypothetical questions.

A further point, which is one of some difficulty is whether the "legal right" which is the foundation of the jurisdiction must be one inhering in the 'Province' as such or whether it is sufficient if it inheres in a citizen of a Province. In other words, can a Province or a State agitate with another Province or State a question affecting a citizen of that State or so to speak adopt a quarrel and vindicate the rights of the subject under the Constitution? It is submitted that the expression "legal right" is not qualified, that is to say, it is not stated to be a "legal right" of the Province or State, hence it would not matter in whom it inhered, and that provided there is a dispute between the parties referred to in the section, which involves a legal right, the Federal Court would have Jurisdiction.

Where the condition as to the proper parties is satisfied the Jurisdiction of the Federal Court extends in the case of all the "units" to the interpretation of the organic law of the Federal Constitution, (*i.e.*, the Constitution Act, the Orders in Council, with the addition of Instrument of Accession in the case of the Indian States). It further embraces the interpretation of all Federal Law and even Provincial Law in the case of the British Indian Units. In the case of the Indian States however it extends to the interpretation of the law only in respect of the matters on which by and under the Instruments of Accession the Federal Legislature has power to make laws for the State in question.

The Indian States can have access to the Federal Court when contesting the directions given by the Federal executive under Part VI, while in the case of the Provinces, the authority of the Governor-General in his discretion is final in regard to the matter. Cf., S. 128 with S. 126.

Proviso (a) (iii) is enabling and the submission to the jurisdiction has to be specially mentioned in the agreement to confer it. There could also be specific exclusion of jurisdiction—see proviso (b).

205. (1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

NOTES.

S. 205: Appellate Jurisdiction of Federal Court in Relation to British India.

The section deals with the appellate jurisdiction of the Federal Court in relation to British India; and S. 207 defines the cases in which appeals lie from Courts of Federated States.

Appeals lie to the Federal Court from any judgment, decree or final order of any High Court in British India if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council issued thereunder.

"Judgment decree or final order"—Do they extend Criminal cases.—The words "Judgments, decree, or final order" are not easily capable of definition; and judicial decisions as to the meaning of the words, the distinctions between them, the tests to determine the class into which any case falls, are so numerous and not easily reconcilable with each other, that no definition has been attempted here. The reader will find the numerous cases analysed with some attempt at reconciliation in 19 Halsbury. (Halsbam Ed.), p. 205 and notes thereto. See also *Tata Iron and Steel Co. v. Chief Revenue Authority of Bombay*, 47 Bom. 724 (P.C.). Is the expression "Judgment, decree, final order" apt to include decisions of the High Court in the exercise of its Criminal Jurisdiction—original, appellate, or revisional—where the other conditions of the section as to the case involving a substantial question of law as to the interpretation of this Act, etc., are satisfied? It may be noted that the corresponding S. 73 of the Commonwealth of Australia Act uses the words "Judgments, decrees, orders and Sentences" It is submitted that an appeal would lie in Criminal cases also. The word judgment in its original or primary sense meant a decision or adjudication of a Court of Common Law whether of Civil or Criminal jurisdiction. In Courts of Record having Criminal jurisdiction the final adjudication of the Court is termed the "judgment" and in it is included the "sentence." Clause 41 of the Letters Patent (of the chartered High Courts) uses the words "judgment, order or sentence" in relation to appeals in Criminal cases, thus indicating that the term 'judgment' is apt to comprehend decisions in Criminal cases. S. 31 of the Supreme Court of Judicature Act, 1925 excludes the jurisdiction of the Court of appeal in "Judgment and orders of the High Court in a Criminal cause or matter". The absence of the word 'sentence' therefore cannot, it is submitted, militate against this construction.

Meaning of "Final".—As contrasted with the language used in Clause 39 of the Letters Patent, where the adjective 'final' is placed first—"Final judgment, decree or order" so as to be capable of being read distributively as Final judgment, Final decree or Final order, (see per Lord Atkinson, in *Tata Iron and Steel Co. v. Chief*

Revenue Authority of Bombay, 47 Bom. at 733 P.C.), the term "final" is in this section placed at the end governing only the word "order". Have judgments and decrees to be final before they are capable of appeal, or does an appeal lie from judgments which are not final? Turning on the meaning of the word "final", is the finality that is posited, a finality for the cause, or, is it a finality for the Court? In other words (1) does an appeal lie from preliminary or interlocutory judgments and decrees and (2) does an appeal lie to the Federal Court notwithstanding the judgment is capable of an appeal under cl. 15 of the Letters Patent?

Appeals from preliminary judgments.—The policy of the Act to have a speedy adjudication of causes raising questions of the construction of the Constitution Act (Cf. S. 225), would seem to favour the view that appeals would lie from interlocutory or preliminary judgments to the Federal Court. Nor can the departure from the language of the letters patent (cl. 39) conferring the right to appeal to the Privy Council and therefore in *pari materio* be other than deliberate.

Appeals from judgments of the High Courts which are capable of appeal under cl. 15 of the Letters Patent.—Under cl. 39 of the Letters Patent of the Chartered High Courts, it is by a specific exclusion that the right of appeal to the Privy Council from such judgments decrees, etc., is denied. See cl. 15 and cl. 39 of Letters Patent. A judgment or decree of a single Judge of a High Court, is certainly a judgment of a High Court notwithstanding that an internal appeal is provided for to the same Court. A literal reading of the sub-S. (1) would therefore seem to confer a right of appeal from judgments of single judges of a High Court direct to the Federal Court. Nor can the judge refuse the certificate under this sub-section, for if the case involves a question as to the interpretation of the Constitution, an obligatory duty is laid upon the Court to grant the same, and the fact that an appeal lies to the High Court itself, whether with or without leave would not be a ground for withholding the certificate.

But sub-S. (2) would seem to throw some doubt as to whether a literal reading of the language is the correct mode of interpretation. That sub-section bars direct appeals to the Privy Council in cases where a certificate is granted, suggesting therefore in some degree that the case has ripened into a stage where an appeal to the Privy Council would otherwise lie. Sub-S. (2) bars direct appeals to the Privy Council but does not bar an appeal to the High Court and it is possible to imagine a case where more than one party might desire to appeal, and one files an appeal to the High Court, while the other prefers the forum of the Federal Court. The practical inconvenience and the confusion to which such a state of affairs would lead is not an unimportant consideration in the construction of the section. With such conflicting considerations, it would be seen that it is difficult to hazard an opinion as to the correct construction of this section.

Substantial question of Law.—The expression 'substantial' has evidently to be understood in the sense which it has received in S. 110, Civil Procedure Code, in a closely analogous context. Thus, where the principles of the law are well settled and the case involves merely the application of the law to the facts, no substantial question of law would be involved. A "substantial question" of law would have to be distinguished from "a mere question" of law, though here it would seem that having regard to the fact that the interpretation of the Constitution is involved, too narrow a construction ought not to be placed on the expression.

Interpretation of this Act or any order in Council made thereunder.—Though if a matter involved a question of the interpretation of the Constitution, the Federal Court would interpret Federal and Provincial law as well it is not a regular appellate forum for the interpretation of such law. By reason of this it would seem that questions of repugnancy under S. 107 between Federal and Provincial law would not normally come within the purview of the appellate jurisdiction of the Federal Court. In those cases where it is conceded that the subject-matter of the legislation falls within the concurrent list, it is only the construction of the relevant Federal and Provincial Law, and the repugnancy between them that arises for consideration, i.e., in the admittedly concurrent field, it is not a question of conflict or competition of powers, but a supremacy of admitted powers when exercised that arises for adjudication. The concurrent list raises problems not of primary *ultra vires* in the sense of absolute incompetence, but of inconsistency in an 'occupied field'.

Even in such cases if the point were raised whether the subject fall within the concurrent list, it would raise truly constitutional questions for adjudication on the appellate side of the Federal Court.

It would seem that the construction of the rules made under the Act, apart from their validity, cannot be a matter in respect of which the certificate could be granted, for among subsidiary legislation the section singles out only Orders in Council, made under powers conferred by the Act, the interpretation of which could justify an appeal to the Federal Court.

The certificate.—The policy of the Act being that before the Privy Council is called on to decide any question as to the interpretation of the Act, they should have the opinion of the Federal Court before them, the High Courts are enjoined to grant certificates of their own motion if the case raised a substitutional question—and the certificate bars direct appeal to the Privy Council.

If the certificate is not granted, there can be no appeal to the Federal Court from the order refusing to grant a certificate. (*Cf. Ramnathya v. Kotayya*, 52 M. 952=57 M.L.J. 398; *In re Mannalam Goriada Rao*, 59 M. 293); nor it is submitted would Federal Court be competent to grant special leave to appeal, as "all appeals exist merely by Statute and unless the statutory conditions are fulfilled no jurisdiction is given to any Court of Justice to entertain them". *Ohene Moore v. Akeseh Tayee*, 1935 A.C. 72 (P.C.).

Neither can the Federal Court by Rules made for regulating the "practice and procedure" of the Court under S. 211, make a provision enabling itself to permit appeals in such cases—for "the creation of a right of appeal is an act which requires legislative authority; neither the inferior Court nor the superior Court, nor both combined can create such a right" Kennedy, L.J., in *National Telephone Co. v. Postmaster General*, (1913) 2 K.B. 621 *Cf. Attorney-General v. Sillitoe*, 10 H.L.C. 701=11 E.R. 1200.

It is however submitted that if the want of such power should lead to inconvenience, it would be within the competence of the Federal Legislature to confer such power on the Federal Court under S. 215. The language of that section would seem to be apt and designed to cover such a case.

If a case satisfies the requirements of sub-S. (1) as involving a substantial question as to the interpretation of the Act etc., and the certificate of the High Court is granted, it would be open to the appellant to raise and agitate before the Federal Court any question which might have formed a ground of appeal to the Privy Council without special leave, i.e., provided the case satisfies the requirements as to the value specified in S. 110, Civil Procedure Code, then if it were an affirming judgment, any substantial question of law, and in every other case, any question of law or fact may be raised as of right (vide S. 111 A. Civ. Pro. Code as amended by the Adaptation Order in Council 1937). The Federal Court however might allow other grounds to be taken—e.g., if a case does not fulfil the requirement as to value, the party may be heard on points of law with the permission of the Court. This would be a very necessary part of their jurisdiction for it is the pronouncement of the Federal Court on the interpretation of Federal Law that would lead to uniformity in its construction and administration over the whole of the Federation.

206. (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

NOTES.

S. 206: Limits and Appellate jurisdiction of Federal Court.—This section clothes the Federal Legislature with power to confer an enlarged appellate jurisdiction on the Federal Court; one of those rare cases where power to affect the provisions of this Act is conferred on the Indian Legislature (*S. 110 (b) (ii)*). By such legislation the Federal Court may be induced to interpret Federal or Provincial Law even when no Constitutional question is involved. It should however be noted that the enlargement of jurisdiction can only be in respect of British India, the Federal Court cannot be converted into a regular Court of Appeal from the Courts of the Indian States. In respect of the enlarged appellate jurisdiction the Act fixes the minimum value of the subject-matter of the appeals at Rs. 15,000, but the Federal Court may be empowered to grant special leave in cases where the requirement as to value is not satisfied.

Sub-S. (2).—To the extent to which a right of appeal is conferred on the Federal Court, power is given to affect the right of appeal from the High Courts to the Privy Council including prerogative appeals. (*See S. 110 (b) (iii)*.)

Sub-S. (3).—This sub-section follows the general principle on which S. 108 (1) (a) is based.

207. (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

NOTES.

S. 207: Appeals from Courts of Federated States.—It was seen that S. 205 provided that a certificate could be granted by a British Indian High Court to enable an appeal to be filed in the Federal Court, only if 'a substantial question of Law' as to the interpretation of the organic law was involved in a case. The expression "substantial" has been dropped in this section. Perhaps in practice this may not make much of a difference, as the appeal is by way of case stated. But there is nothing to tie down the Federal Court or the State Court from having a matter adjudicated by the Federal Court even if the question of law involved cannot be regarded as substantial.

If the State Court fails or refuses to state a case for the opinion of the Federal Court it would be open to the party to move the Federal Court in the matter—a procedure absent in the case of appeals from British Indian Courts. "It was urged that to permit a litigant in a State Court to apply to the Federal Court for leave to appeal, if

the State Court had already refused leave, would be to derogate from the sovereignty of the Ruler of the State, and that the refusal of a State Court to grant leave to appeal, at any rate, in a case concerning the interpretation of Federal laws, should be treated as final. We should much regret the inclusion of a provision of this kind. The appellate jurisdiction of the Federal Court, so far as regards an Indian State, arises from the voluntary act of the Ruler himself, viz., his accession to the Federation; the jurisdiction is in no sense imposed on him *ab extra*. This being so, and since it is proposed that all appeals to the Federal Court should be in the form of a special case to be stated by the Court appealed from, we think the position of the States would be appropriately safeguarded if it were provided that the granting of leave to appeal by the Federal Court were in the form of Letters of Request, directed to the Ruler of the State to be transmitted by him to the Court concerned." (J.P.C. Rep. para. 325).

Jurisdiction of Federal Court—The Jurisdiction of the Federal Court as an appellate Court from Courts of the Federated States is much more restricted than in respect of appeals from British Indian High Courts. Whereas under S. 206, if the case involves any question of the interpretation of the organic Law, the power of the Federal Court extends to the interpretation of Federal and Provincial Law, under this section, its jurisdiction is confined to the interpretation of the Organic Law—which in the case of the States includes the Instruments of Accession and agreements under Part VI. It will therefore be seen that unlike as in the appeals from the British Indian High Courts, questions as to the interpretation of Federal law, cannot be raised or decided by the Federal Court in appeals from State Courts, even in respect of matters over which the Federal Legislature has competence as regards the particular State, and this notwithstanding that under S. 212, the law declared by the Federal Court "on any matter with respect to which the Federal legislature has power to make laws in relation to the State" is given a binding force, on the Courts of the State. It is certainly anomalous that the Federal Court should not be in a position to examine how far the law declared by it has been followed by the State Courts, even in cases where that law is binding on them.

Power to call for further facts.—A power is specifically conferred on the Federal Court to call for further facts in appeals from the State Courts but no such provision is found in the sections dealing with appeals from British Indian High Courts. In the absence of such a provision questions may be raised as to the power of the Federal Court in hearing an appeal from British Indian Courts—to take fresh evidence, to call for findings on facts, or to remand an appeal for disposal, say, after framing proper issues. (Cf. S. 107 C.P. Code.) Possibly it would be within the competence of the Federal Court under S. 214 to frame rules for the proper and effective exercise of the jurisdiction conferred on it.

208. An appeal may be brought to His Majesty
Appeals to His Majesty in Council. in Council from a decision of the Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

NOTES.

S. 208: Appeals to the Privy Council.—No appeal lies as of right to the Privy Council from the appellate decisions of the Federal Court. But provision has been made in this section for appeals being entertained provided leave thereto is granted either by the Federal Court or by the Privy Council.

Appeals lie from the decisions of the Federal Court in its original jurisdiction as of right only if the matter involves a question as to the interpretation of the organic law of the Constitution. In all other cases, where the question turns on the interpretation of Federal Law or where the jurisdiction arises by consent under Proviso (a) (iii) (S. 204), an appeal lies only on leave granted by the Federal Court or by the Privy Council. For the principles on which leave to appeal is granted by the Privy Council in such cases see *Wulfev Ore v. Guthridge*, 1906 A.C. 548.

Appeals from advisory opinions.—Would an advisory opinion delivered by the Federal Court in its consultative jurisdiction under S. 213 be a "decision of the Federal Court" within the meaning of this section, so as to permit of an appeal therefrom to the Privy Council? In Canada, where the system of advisory opinions exists statutory provision has been made for appeals being taken from such opinions of the Supreme Court to the Privy Council. S. 60 Supreme Court Act, 1906, provides by sub-S. (6) that "the opinion of the Court upon such reference although advisory only shall for all purposes of appeal to His Majesty in Council be treated as a final judgment of the said Court between the parties." In the absence of such an express provision here it would seem that no appeal would lie from an advisory opinion of the Federal Court. Cf. *Tata Iron and Steel Co. v. Chief Revenue Authority, Bombay*, (47 Bom. 724 P.C.).

209. (1) The Federal Court shall, where it allows an appeal, remit the case to the Court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the Court from which the appeal was brought shall give effect to the decision of the Federal Court.

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the Court from which the appeal was brought and that Court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

NOTES.

S. 209: Sub-S. (1).—This adopts the procedure of the Privy Council in dealing with appeals. The Federal Court has no machinery for executing its decrees and that is left to the Court from which the appeal has been brought.

Sub-S. (3): **Stay of Execution.**—When an appeal is preferred from the judgment of a High Court to the Federal Court, O. 45, r. 17 of the Civil Procedure Code (as modified by the Adaptations of Laws Order in Council 1937) empowers the High Court to stay proceedings, in the same manner as in appeals to the Privy Council. But in the case of appeals from the Federal Court to the Privy Council, no provision has been made empowering the Federal Court to stay execution. In the case of the original jurisdiction of the Federal Court from which alone appeals lie to the Privy Council as of right, there is no need for the power because the judgment can be declaratory only (S. 204) (2)) and there is no question of execution of such a decision. But in cases arising on the appellate side of the Federal Court where leave is granted for an appeal to the Privy Council, a provision as to stay of execution would seem to be needed. In such cases the High Court or the Subordinate Courts from which the case originally started would have no jurisdiction to stay execution, either, and it would appear that applications for stay would have to be made in the Privy Council.

Quære whether the Federal Court in exercise of its powers to frame rules regulating its 'procedure' can assume a power to stay execution of an appeal not pending before it?

Enforcement of decrees and orders of Federal Court and orders as to discovery, etc.

210. (1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of Court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all Courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest Court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section; or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

NOTES.

S. 210. —Explaining the section, the *Attorney-General* stated: "The sub-section provides that all authorities, civil and judicial shall act in aid of the Federal Court. In the first place, the Federal Court is not a British Indian Court, but is as much a Court of the Provinces as of British India.

"The second sub-section deals with what I call the routine of the administration of Justice. It has nothing to do with causes of action. It deals with the orders of the Federal Court with regard to securing the attendance of persons, or the discovery or production of documents, the investigation or punishment of contempt of Court, and matters of that sort. When the Federal Court has made its order and it comes to be enforced against any person either in British India or in a Federated State it will be enforced by the Court which has jurisdiction in that part of the Federation". (*Parl. Deb.* Vol. 300, Col. 158-9).

Sub-S. (3).—"Paragraph (b) is intended to provide a proper protection to the States in connection with the exercise of the jurisdiction of the Federal Court. The States took the view that they could not put their own Courts in direct subjection to the Federal Court except in relation to matters on which they had accepted the jurisdiction of the Court. They are perfectly prepared to assume an obligation on behalf of their Courts to obey the orders of the Federal Court in relation to matters in which they themselves are parties, but they are not prepared to see the Federal Court given power in relation to the States to secure the attendance of witnesses or the discovery of documents in cases arising under the additional appellate jurisdiction conferrable on the Court by the Federal Legislature if it is so decided under S. 206. That would in no case have any application to the States." (*Parl. Deb.* Vol. 302, Col. 985).

211. Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

Letters of request to Federated States.

NOTES.

S. 211.—Explaining the frame of this section the *Attorney-General* said: "This Clause is framed in this way in order that the appropriate phrase, 'letters of request' may be used in regard to a Sovereign Ruler instead of the expression of a direct order to, or something of that sort. Any lawyer is familiar with the expression 'letters of request', which is a phrase used when one Sovereign Ruler has to make a communication to another with regard to the performance of some act necessary for the administration of justice in the first of the two countries. In this Clause it is merely an enactment to show proper respect to a Sovereign Ruler, without the necessity of an order being directed to him to state a case, that letters of request shall be addressed to him. Then I am asked what is to happen if a Ruler does not comply with the request contained in the last two or three lines of the Clause. I entirely decline to contemplate that a Ruler will not comply with the request. It is found in practice between Sovereign States that when letters of request are addressed it is not customary to decline to act upon them, and I do not think that that situation will arise". (*Parl. Deb.* Vol. 300, Col. 165.)

Cf. S. 77 Civil Procedure Code and O. 37 r. 6-A Rules of the Supreme Court.

Quære: Whether there is any point in the use of the plural number in reference to the Federal Court in this section, (note the words, 'require,' remit') whereas the singular is used in other sections, as for instance in S. 209.

212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all Courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

Law declared by Federal Court and Privy Council to be binding on all Courts.

NOTES.

S. 212. Federal Court & Privy Council—Superior Courts.—The Act constitutes the Federal Court and the Privy Council as the two Superior Courts, and while the Privy Council is the ultimate Court of Appeal both for the interpretation of the Constitution, and of Federal and Provincial law, the Federal Court is made a final Court of Appeal for the interpretation of the Federal and Provincial Law from whose decisions appeals lie to the Privy Council only by special leave. As such the "law declared by them" is rendered supreme and binding on all the Courts in British India.

The expression "all Courts in British India", would not, it would seem from the context and the collocation of the words, include the Federal Court. This construction would leave it open to the Federal Court to reconsider its own decisions and overrule them if the same or a fuller Court was of the opinion that a prior decision of theirs was wrong. For the Constitution is the supreme law of the land, and the ultimate Court, is not by any rule of *stare decisis*, or to use an expression familiar in American Constitutional Law, *res judicata*, to be precluded from giving effect to what in the light of its best judgment, is the proper interpretation of the Law. The Judicial Committee for instance does not hold itself completely bound by its former decisions (*Real v. Bishop of London*, 1892 A.C. 644), Cf., a contrary rule in the case of the House of Lords (*London Street Tram Co. v. London C. C.*, 1898 A.C. 375).

Is Federal Court bound by decisions of the Privy Council.—The Federal Court is not statutorily bound by S. 212 to "recognise as binding the law as declared by any Judgment of the Privy Council" for as stated already, the expression "all Courts in British India" cannot in the context include the Federal Court.

The binding character of the law as declared by the Privy Council on the Supreme Court of a Dominion was raised in an acute form in Australia, when the High Court of Australia refused to follow the decision of the Privy Council in *Webb v. Outim*. (1907) A.C. 81) negating the applicability of the doctrine of the Immunity of Instrumentalities to the construction of the Australian Commonwealth Act. The High Court in several previous cases,—*Wollaston's case* 28 Vict., L.R. 357. *D'enden v. Pedder* 1 Com. L.R. 91, etc., had applied that doctrine.

The State Court of New South Wales followed the decision of the Privy Council, and the matter came up on appeal to the High Court in *Baxter v. Commissioners of Taxation*, (4 Com. L.R. 1087). The High Court admitted, that to the extent the Privy Council was a Court of Appeal from the High Court its decisions and the law declared therein were binding, but that as by S. 74, of the Commonwealth Act, appeals on the interpretation of the Constitution Act, could come before the Privy Council only after the grant of leave by the High Court, Privy Council decisions on direct appeals from the State Courts were at the best only those of a co-ordinate authority which had a persuasive and not a binding force.

Under this Act, however, no such questions could arise as the Privy Council is constituted the regular Court of Appeal in Constitutional cases (as under Canadian Legislation) from the original jurisdiction of the Federal Court, and in regard to the appellate jurisdiction, the right to grant leave to appeal is statutorily vested in the Privy Council.

Though the Federal Court is not statutorily bound by the decisions of the Privy Council, it would be bound by them on the principle that "decisions of an appellate Court of last resort are binding on all Courts from which an appeal lies to it". (Pollock-First Book of Jurisprudence.) For it is a recognised working rule, necessary for establishing consistency and uniformity in the law that a Court should follow the decisions of Courts of final appeal. "The Privy Council is the ultimate Court of appeal and it is the manifest legal duty of every tribunal subject to its controlling power to acknowledge without question the law as pronounced in its determination". *Baxter v. Commissioner of Taxation*, 4 Com. L.R. 1087. Further "it is bound to follow them for the very obvious reason that if it declined to follow them such a decision would be reversed on appeal so that such a refusal would be both futile and mischievous." (*Ibid* at p. 1102).

Are Advisory opinions within S. 212.—The expression "law declared by the Federal Court" raises for consideration the question whether it would include the law as expounded in the "opinion" of the Federal Court on a consultation under S. 213. The terminology employed designating the conclusion reached by the Court as an "opinion" as distinguished from the "Judgments" which they pronounce in the exercise of their original and appellate jurisdiction; the circumstance that the report of the Court is not legally binding on the executive as the jurisdiction is purely consultative (though it is inconceivable that it would be disregarded); the fact that there is no "lis" before the Court and the 'hearing' must from the very nature of the case be on imperfect materials; and the very arrangement of the sections by which S. 212 forms the last of a fascicules of sections dealing with the normal judicial functions of the Court, while the section dealing with the advisory jurisdiction is placed after 212; all these might be said to militate against holding that the law enunciated in such opinions is binding on the Courts.

But it may be noticed that in Canada, where the system of advisory opinions mostly prevails, the law declared in such opinions is a part of the law of the land, valid and binding until set aside by the Court itself, or on appeal, by the Privy Council, so that there is nothing, in the nature of things, to preclude such judgments or opinions from being binding. *Secondly*, the language of S. 212 itself seems to draw a distinction between the "law declared by the Federal Court" and by any "judgment of the Privy Council"; the word "judgment" not being used in relation to the Federal Court. If it was sought to exclude from the law declared in the 'opinions' of the Federal Court, a binding character as regards "the Courts in British India", nothing would have been easier than to have stated that the "law declared by any judgment of the Federal Court or the Privy Council" shall be binding on the Court, which would have put the matter beyond controversy.

Again a distinction must be drawn between the binding character of the "opinion or report" and the binding character of the "law declared" in such report. The former is not binding on the executive in strict legal theory, but so far as the Courts are concerned they would be bound by the "law declared" in such opinion. These considerations therefore would seem to point to the conclusion that the law declared in advisory opinions is within the scope of this section.

British India and Federated States.—This section falls into two parts—the first relating to British India and the second to the Indian States;

the "law declared by the Federal Court and the Privy Council" is binding on the State Courts only to the extent that it involves an interpretation of the organic law, and the interpretation of Federal Laws in so far as they, by reason of their cession of jurisdiction, have clothed the Federal Legislature with power to enact.

The internal law of the State, in so far as it is not included in the matters over which the Federal Legislature has power, is outside the Federal field and therefore equally outside the jurisdiction of the Federal Court and the Privy Council under this Act.

"The Federal Court and Privy Council are superior Courts and their decisions must be followed and recognised by lower Courts. So far as the Indian States are concerned it provides that any decision of the Federal Court and the Privy Council 'so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State' in those cases the decision shall be recognised as binding and followed by the Courts of the Federal State. If a question comes before the Court of a State as to the interpretation of the Constitution, or in respect of a matter on which the Federal Legislature has power to make laws in that State, the Court in the State will follow the decision of what is for this purpose the superior Court, namely, the Federal Court or the Privy Council as the case may be. It would be an impossible position if, in matters involving the interpretation of this Act in its application to a State, the Privy Council and the Federal Court were giving one interpretation and the Court of the Federal State giving another. (*Parl. Deb. Vol. 300, Col. 209*). But as already noticed if the State Courts do not understand aright the decisions of the Federal Court or the Privy Council, or if they do not give full effect to them, there is no machinery for correcting the error, as the appellate jurisdiction of the Federal Court *quoad* the State Courts is restricted in this regard. (See notes to S. 207 ante).

213. (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that Court for consideration, and the Court may, after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open Court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

NOTES.

Reference to The Federal Court by the Governor-General.—This section confers on the executive head of the Federal Government power to propound questions of law for the "opinion" and report of the Federal Court. Such a procedure is not unknown in England for S. 4 of the Judicial Committee Act 1833, provides that His Majesty may refer to the Privy Council "any such other matter whatsoever as His Majesty shall think fit".

The use of the Courts for the determination of questions in anticipation of their arising has been held to be unconstitutional in Australia in *In re The Judiciary Act*, (29 Com. L. R. 257). The Judiciary Act of the Commonwealth purported to clothe the High Court of Australia with jurisdiction to "hear and determine" any question referred to it by the Governor-General as to the validity of any enactment of the Commonwealth, and the Act rendered the determination "final and conclusive and not subject to any appeal." When under the Act, certain questions were propounded to the High Court for their opinion, the latter refused to answer them on the ground that the Act was *ultra vires*. The contention that the jurisdiction conferred was purely advisory was rejected and it was held that the power to deter-

mine finally in the absence of a "lis" was not a "judicial power" with which the High Court could be lawfully clothed.

In Canada, however, Acts have been passed in 1875, 1891 and 1906, by the Dominion Parliament authorising the executive Government to obtain by direct request answers from the Supreme Court of Canada on questions of law and fact and nearly all the Provinces have passed Acts in similar terms requiring their own Courts to answer questions put by the Provincial Governments. The validity of such legislation was attacked before the Privy Council in *A. G. for Ontario v. A. G. for Canada*, (1912) A.C. 571 but the Committee held that it was *intra vires*, that the opinions were only advisory and that by giving them it could not be said that the Court ceased to be a judiciary.

So far as the executive is concerned, in the words of Lord Loreburn, the answers are only advisory, and have no more effect than the opinion of the Law Officers, which would seem to be the case under this section also, (*ibid*). In the words of the Lord Chancellor delivering the Judgment of the Judicial Committee in *The Regulation and Control of Aeronautics in Canada in re*, [1932 A.C. 54 (66)]. "The advisability of propounding for the consideration of the Court abstract question or questions involving considerations of debatable fact is to say the least, doubtful; and it is undesirable that the Court should be called upon to express opinions which may affect the rights of persons not represented before it or touching matters of such a nature that its answers must be wholly ineffectual, with regard to parties who are not and who cannot be brought before it *e.g.*, foreign Governments."

The practical inconveniences of this procedure were stressed by Lord Haldane in *Attorney-General of British Columbia v. Attorney-General of Canada*, 1914 A.C. 153. "Under this procedure questions may be put which it is impossible to answer satisfactorily. Not only may be the question of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class their Lordships have occasionally found themselves unable to answer all the questions put to them and have found it advisable to limit and guard their replies." Indeed Lord Loreburn in delivering the Judgment of the Judicial Committee in *Attorney-General for Ontario v. Attorney-General for Canada* (1912) A.C. 571 has pointed out "the mischief and inconvenience which would arise from an indiscriminate and injudicious use of the power." Further speaking on Cl. (4) of the Rating and Valuation Bill of 1928, which proposed a reference to the Judges of some questions by the Executive, Lords Hanworth, and Atkin, who supported the proposal suggested that if the procedure ensued a reference only of concrete cases, and not of purely hypothetical questions there might not be much of an inconvenience. Human nature being what it is, the Judges will be more than human, if they can be persuaded to depart from opinions already pronounced by them though such advisory opinions may not have a binding force on them. And this is a further consideration against the expediency of inviting opinions beforehand.

But there is this to be said in its favour that a judicial interpretation of an independent tribunal is preferable to the arbitrary ruling of the executive. If care were taken that no questions be propounded to the Court as would come before them as concrete cases for their determination, as a regular Court, the existence and exercise of this jurisdiction would be salutary.

Further if this jurisdiction were utilised for the determination of "non-justiciable" dispute *inter se* the units and between the units and the Federation, as for example to replace the commissions of enquiry under para 308 of the Montague-Chelmsford report such determination would be beneficial and such as to command general satisfaction.

214. (1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make Rules of Court, etc. rules of Court for regulating generally the practice and procedure of the Court, including rules as to

the persons practising before the Court, as to the time within which appeals to the Court are to be entered, as to the costs of and incidental to any proceedings in the Court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:

Provided that, if the Federal Legislature make such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Court, the rules shall provide for the constitution of a special division of the Court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of Court, the Chief Justice of India shall determine what judges are to constitute any division of the Court and what judges are to sit for any purpose.

No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

NOTES.

Practice and Procedure.—According to Lord Westbury in *Attorney-General v. Sillem* 10 H.L.C. 704=11 F. R. 1200, the word "Practice" in its common and ordinary sense denotes "the rules that make or guide the *Cursus Curiae* and regulate the proceedings in a cause within the walls or limits of the Court itself." So it does not involve or imply anything relating to the nature and extent of the jurisdiction. Practice like "Procedure" denotes "the mode of proceeding by which a legal right is enforced as distinguished from the law which gives or defines the right." (*Poyser v. Atiours*, 7 Q.B.D. 329 at 333.)

Sub-S. (4).—The analogy of the House of Lords is adopted in preference to that of the Privy Council, and any other rule would have been inconvenient because appeals lie from the Federal Court to the Privy Council with or without leave depending on the nature of the case. It is submitted that the language of the subsection does not preclude the Judges who are in a majority from delivering separate and concurring judgments—as in the House of Lords.

215. The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

NOTES.

"This is a section put in purely out of precaution, in case it should turn out that in some very important and vital matter some supplemental power is necessary for the purpose of enabling the Court more effectively to exercise its jurisdiction. Where you are dealing with such important matters as this, it is thought wise to put in an enabling section to enable the Legislature, should the need arise, to fill up the gap. The powers under the section are definitely limited and restricted. The powers are to be such as may appear necessary to enable the Court to exercise the jurisdiction conferred upon it by or under this Act. Necessarily there is no specific point

in mind or the section would have been made specific. The Legislature will have the power, should it be required, to confer upon the Court the powers necessary to enable it to perform the functions placed upon it under the Act". (*Parl. Deb., Vol. 300, Col. 236*).

216. (1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

NOTES.

Scope and Object.—Explaining this section it was stated:—"It would not be possible that in connection with all administrative expenses the Court should finally decide what the figure should be. Suppose for instance that a question arises as to the upkeep of buildings or an enlargement or reconstruction in one particular year or another. Part of the object of this sub-section is to ensure that, if that is a proper and necessary thing to do, there shall be no question about its being done. But you could not put on the judiciary the executive responsibility of deciding whether, say rebuilding should be done in any particular period. The necessary procedure is, that the Court knowing what they require—and in passing I may mention that this, of course, does not deal with the salaries of the Judges—for the salaries of their staff and for necessary expenses in connection with the upkeep or reconstruction of buildings, the construction of new buildings, and so on, the responsibility for expenditure of that kind must be on the Executive. Otherwise you would have the Judges being criticised for spending public money and so on. An executive minister must be responsible. The object of the sub-section is to safeguard the demand, in this case of the Federal Court, and similar provision is made for the corresponding case of the High Court, for all proper and reasonable expenditure, and to prevent ministers from seeking to cut down such expenditure because it would starve them of money which they need for other purposes; so that should it unfortunately happen, which we do not anticipate, that ministers suggest that expenditure which the Governor-General has said was reasonable is excessive, it will be the Governor-General who has the last word as to what figure shall be put in the estimate when the matter comes into the Budget". (*Parl. Deb., Vol. 300, Cols. 239-40*).

217. References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any court which His Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

NOTES.

"Under this section it will be for the Crown to say what Courts should be determined to be High Courts for the purposes of this part of the Act. Such decisions will be by the Crown after communication with the Ruler of a State but the decision will rest with the Crown". (*Parl. Deb., Vol. 300, Col. 243*).

218. Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave.

NOTES.

"This section is included only with a view to making good the intention of the Government to maintain the right of appeal from the Court at Aden to the High Court at Bombay". (*Parl. Deb.*, Vol. 300, Cols. 243-44).

Cf. S. 288 (4), *infra*.

CHAPTER II.

THE HIGH COURTS IN BRITISH INDIA.

219. (1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act:

Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this subsection, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in British India.

NOTES.

Explaining the Provision to sub-S. (1) it was stated:—

"This is to meet the possibility of what is now the Judicial Commissioner's Court in the Central Provinces and Berar being, as may well happen, converted into a High Court before this Bill becomes an Act. At present it is referred to as what it is now, namely, the Judicial Commissioner's Court in the Central Provinces and Berar. It may well be that before the Bill becomes an Act, it will have been turned into a High Court". (*Parl. Deb.*, Vol. 300, Col. 244).

220. (1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint:

Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that court.

(2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years:

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor resign his office;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

(a) is a barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or

(b) is a member of the Indian Civil Service of at least ten years standing, who has for at least three years served as, or exercised the powers of, a district judge; or

(c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court; or

(d) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession:

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a judge of a High Court.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

NOTES.

Sub-S. (1).—The opening words of the sub-section are taken from the opening words of S. 106, Government of India Act 1915, while the rest of the sub-section reproduces S. 101 (2). S. 101 (2), Proviso (ii), fixed the maximum number of judges for all High Courts at twenty but under this Act by the Government of India (High Court Judges) Order, 1937, the maximum strength of the several High Courts are fixed differently. The sanctioned strength of each High Court—excluding the Chief Justice but including the additional judges to be appointed by the Governor-General under S. 222 (3) is as under.

Madras	15
Bombay	13
Calcutta	19
Allahabad	12
Lahore	15
Patna	11
Nagpur	7
Oudh	5
Sind	5
N.W.-F. Provinces	2

Sub-S. (2).—This in general corresponds to S. 102 (2) of the Act of 1915. Under the Government of India Act, 1915, the tenure of judges was during pleasure, [S. 102 (1),] but under this Act, it is during good behaviour—in line with the tenure of judges of Superior Courts in the Dominions. Under the previous law, the age limit of sixty was not statutory, but was enforced by taking an undertaking from judges at the time of their appointment to retire at that age.

Sub-S. (3).—The qualifications herein set out are the same as under S. 101 (3) of the old Act, with three variations. (1) A 10 years standing is required in the case of Barristers as in the case of Advocates, whereas formerly it was 5 years in the case of Barristers, though it was 10 years for Advocates.

(2) In the case of the High Courts constituted by Letters Patent the office of Chief Justice is no longer confined to Barristers, but Advocates, and members of the Indian Civil service are also rendered eligible, with a proviso however that in the latter case he has served for at least 3 years as a judge of a High Court.

(3) The rule which required a third in number of the judges to the Barristers and another third members of the Indian Civil Service has been abrogated.

221. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

NOTES.

This section reproduces the provisions of S. 104 (1) of the Act of 1915.

The Government of India (High Court Judges) Order 1937, has fixed the salaries, allowances, etc., payable to the Judges of the several High Courts.

222. (1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion think fit to appoint for the purpose.

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor-General that the number of the judges of the court should be for the time being increased, the Governor-General in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

NOTES.

The Governor-General is now to appoint temporary and acting Judges—not each Provincial Government as formerly. The provision is designed with a view to uniformity all over India, of the principles on which such appointments should be made.

Sub-S. (2).—Under the former Act, the appointment of an acting Chief Justice, and temporary judges was made in the case of all the High Courts except Calcutta, by the Local Government. S. 105 (1) and (2).

Sub-S. (3).—This corresponds to S. 101 (2), Proviso (i), Government of India Act, 1915; only the reasons which would justify the appointment of additional judges are mentioned in the section.

223. Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

NOTES.

This section summarises the provisions of Ss. 106 (1), 108 and 112 of the Government of India Act, 1915; and the existing jurisdiction—subject to the provisions of S. 224 (2)—are continued to the High Courts as established by this Act.

Clause 44 of the Letters Patent of the Chartered High Courts, (and similar provisions is found in the Letters Patent of other High Courts) rendered the provisions of the Patent subject to alteration and amendment at the hands of the Indian Legislature alone. After the Government of India Act, 1919, it was a moot point as to how far Provincial Legislatures could affect the jurisdiction of the High Courts. (See *Glulam Nizamuddin v. Akhtar Husain Khan*, 55 All 1008; Cf: *Rajah of Mandasa v. Jagannayakudu*, 63 M.L.J. 450, at 468.

In regard to the powers of the Legislatures under this Act, the Joint Parliamentary Committee state:—"We observe that the Federal Legislature is to have an exclusive power to make laws touching the jurisdiction, powers and authority of all Courts in British India (except the Federal Court) with respect to the subject on which it is exclusively competent to legislate, and that the Provincial Legislature will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are exclusively competent to legislate. It has been suggested that this would enable the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to Courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India. In theory this is no doubt possible; but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law-making power for the purposes which we have mentioned, and, whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High Courts. Our information is indeed that, so great is the confidence felt in the impartiality and ability of the High Courts, a converse policy is much more likely, if the past is any guide, to be adopted. But, in order that the position of the High Courts may be fully safeguarded, we recommend that the Governor-General and Governors should be directed in their Instruments of Instructions to reserve for the signification of His Majesty's pleasure any Bill which in their opinion would so derogate from the powers of the High Court as to endanger the position which those Courts are under the Constitution Act clearly designed to fill." (Rep. (Para 334). Cf. Sch. VII, List I, items 53; List (II); items (1) and (2) and List III, item (15), and Notes to S. 228; *infra*.

In accordance with this recommendation para XVII Instrument of Instructions to the Governor of Madras requires him to reserve for the consideration of the Governor-General. Clause (b):—"Any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by Act designed to fill."

And the Governor-General is by the Instrument of Instructions directed to reserve for the signification of His Majesty's pleasure Bills with similar provisions. See Para XIII (b) of the Instrument of Instructions.

Qualifications of Practitioners.—The power of the High Court to prescribe professional qualifications for the legal profession and to enrol them may now be considered; in other words the question is as to how far S. 119 of this Act, has affected the powers of the High Court in the matters abovementioned. The subject falls under two heads—firstly as regards Attorneys and secondly Advocates. So far as Attorneys are concerned the power to prescribe their qualifications and to enrol them vested in the High Courts under the Letters Patent (Cl. 9—10) is it is submitted continued by the expression “jurisdiction in relation to the administration of justice” in this section. [Cf. the more comprehensive terminology “all such jurisdictions powers and authority as are vested in the Courts at the commencement of this Act” in S. 106 of the Government of India Act, 1915].

As the Letters Patent are neither a Federal nor a Provincial Law, they do not come within the operation of sub-S. 3 of S. 119, so as to attract the provisions of that sub-section. The Letters Patent not being an existing Indian Law within the meaning of S. 311 (2) as not made by any authority in India, so as bring it within S. 119, sub-s. 4, is immune from the powers of the Governor-General under S. 119 (4). The power and authority of the High Court to alter the rules as to the professional qualifications of Attorneys do not come within the purview of S. 119 and are not subject to, the disallowance provided by that section.

In regard to Advocates however the position stands thus. S. 9 (2) of the Bar Councils Act, provides that the Bar Council may with the previous sanction of the High Court make rules to regulate the admission of persons as Advocates and in particular to prescribe their qualifications and to that extent therefore the Letters Patent are abrogated (S. 19 (2).) The result therefore is that while existing rules are unaffected, every new rule would be within the scope of S. 119 (4) and therefore might be brought within sub-s. (3), so as to permit the Governor to disallow the same. In regard however, to the original side of the High Courts of Bombay and Calcutta, the right of these High Courts is saved by S. 9 (4) of the Bar Councils Act, and by the same reasoning as in the case of the Attorneys, the High Courts have an unfettered rule making power.

224. (1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

Administrative functions of High Courts.

- (a) call for returns;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

NOTES.

This section reproduces the terms of S. 107 of the old Act with two variations, one of which alone is of substance:

(1) The provision as to transfer of cases to itself under Cl. (b) has been omitted for the reason stated by the Attorney-General:—“The Codes of Criminal and Civil Procedure already provide for this power in connection with the ordinary jurisdiction of the Courts, that is to say, the power to direct the transfer of a suit or appeal from one Court to another of equal or superior jurisdiction. It seems most undesirable to take one of the powers conferred upon the Courts by the Code, and

introduce it into a section which deals only with administrative matters." (*Par. Deb. Vol. 302 col. 994*).

The omission of this section therefore is consequential on the High Court ceasing to have judicial superintendence over the Subordinate Courts.

The proviso which prescribes the previous approval of the Governor to the validity of the rule made by the High Court under this section, makes a departure from the previous law in the case of the High Court of Calcutta for which the previous approval of the Governor-General in Council was formerly prescribed; thus rendering all the High Courts uniform in respect of this matter.

Sub-S (2).—This deprives the High Courts of the revisional powers which they have been exercising over Courts subject to their appellate jurisdiction ever since the constitution of the High Courts in 1861, originally under S. 15 of the High Courts Act of 1861 and later under S. 107 of the Government of India Act, 1915.

The revisional powers of the High Courts would therefore hereafter be confined to those cases where the Indian enactments confer such a power.

The term "inferior court" is not defined by the Act, and in the context it can presumably mean "Courts inferior to the High Court which are subject to the appellate jurisdiction of the High Court" within the opening words of this section. It is submitted that the sub-section does not affect the powers of the High Court to issue writs of certiorari and prohibition in respect of the proceedings and determination of tribunals which are not "inferior Courts", *e.g.*, in those cases where jurisdiction is conferred on *persona designata* to determine judicially the rights of parties; or in cases of quasi-judicial tribunals.

As to the powers of the High Court *re* appointment, promotion etc., of the Subordinate Judiciary see Ss. 254—255 *post*.

225. (1) If on an application made in accordance with the provisions of this section, a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made except, in relation to a Federal Act, by the Advocate-general for the Federation and, in relation to Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

NOTES.

The need for this provision was thus explained:—"This is a provision to try, as far as possible to mitigate the inconvenience which may arise from the possibility of the validity of an Act, being challenged. In order to minimise the inconvenience caused by possible litigation on those grounds, this is inserted to give the High Court the power to call up cases for its decision. It is an attempt to mitigate, though they cannot be removed, the inconvenience arising from this situation by requiring the High Court in each Province in appropriate cases on the application through its Advocate-General of the Federal or Provincial Government, as the case may be, to exercise the powers which they already possess to take on their own file and decide any case in which the question of the validity of any Federal or Provincial Act, has been raised as an issue". (*Parl. Deb., H. of L., Vol. 97, Col. 1271*).

The substantive power of the High Courts to transfer cases to themselves is contained in S. 24, C.P.C. in regard to civil suits and appeals, (also Clause 13 of the Letters Patent as regards original civil suits), and S. 526 of the Criminal Procedure Code in regard to cases pending in the inferior Criminal Courts.

The section does not confer on the High Courts any new jurisdiction to transfer, but enacts an obligation to transfer to itself cases where otherwise it would have jurisdiction so to act, if the conditions required by the section are satisfied.

Two questions arise on the construction of this section.

(1) Does it apply to appeals pending in an inferior Court, or does the use of the expression "transfer to itself for trial" confine it to cases of original suits, in other words where, the validity of a law which was not attacked at the trial, is impugned in an appeal pending in a subordinate Court is the power under this section available? It is submitted that the expression *case* is comprehensive to include appeals and that the word 'trial' is not used in any technical sense, but in the generic one of 'adjudication'. If however it be held that the disposal of an appeal does not fall within the section, there is still nothing to preclude the High Court from transferring to itself the appeal, under its ordinary power under S. 24 C.P.C. or S. 526 Cr.P. Code.

(2) Where a case falls within the words of this section can the power of transfer be exercised apart from the machinery indicated in the 2nd sub-section. For instance S. 526, Criminal Procedure Code, enables the High Court to transfer to itself a case in which a question of law of unusual difficulty is likely to arise; and the question is whether an accused person can apply for a transfer, where the question of law is one which relates to the validity of an enactment? Sub-S. (2) seems to be mandatory so as not to permit such an application except in accordance with the machinery specified in the section.

226. (1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original Jurisdiction in jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

NOTES.

This section merely reproduces the terms of S. 106 of the Government of India Act, 1915. This restriction is a historical survival on the Statute book of a provision which had its origin in the quarrels between Warren Hastings and the Supreme Court and has been in existence from 21 Geo. III c. 70 (S. 8) and in the same form. The power of the Indian Legislature to remove this restriction on the original jurisdiction of the High Court was under the previous Government of India Act contained in the Fifth Schedule by which S. 106 was rendered liable to repeal or alteration by the Indian Legislature.

For a recent use of this section see *Govindarajulu v. Secretary of State for India*. (1926), 50 Mad. 449=53 M.L.J. 355; and for the construction of the section. *Cf. Alcock Ashdown and Company, Ltd. v. The Chief Revenue Authority of Bombay* 50 I.A. 227=45 M.L.J. 592 (P.C.).

Proceedings of High Courts to be in English. 227. All proceedings in every High Court shall be in the English language.

228. (1) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

NOTES.

Explaining the general effect of these provisions on the High Courts, the Joint Parliamentary Committee stated:—"Their constitution will, as at present, be laid

down in the Constitution Act and the appointments to them will remain with the Crown: the Constitution Act will, moreover, itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the subordinate Courts of the Province—the nature and extent, in fact, of what may be described as their administrative jurisdiction. No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and buildings, except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct and not, as at present, with the Central Government (which, even as matters stand, naturally consults the Bengal Government upon any proposals laid before it by the Court); but the supply required by the High Court will be determined by the Governor after consultation with his Ministers, and will not be subject to the vote of the Provincial Legislature. As regards the juridical jurisdiction of the High Courts, in so far as this depends—as it mainly does depend—upon provisions of Indian enactments, it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court's jurisdiction arise: that is to say, it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate, for the Provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively provincial subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate. It will thus be seen that the High Courts, under our proposals will be institutions which will not accurately be described as either federalised or provincialised." (J.P.C. Rep., para. 335).

The expenses are "charged on the revenues of the Province" and are therefore not votable.

229. (1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.

(2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation.

NOTES.

This section is a reproduction of S. 113 of the former Government of India Act, with this modification that an address for the Chamber or Chambers of the Legislature is requisite before His Majesty's power could be exercised. The Provinces which do not now possess a "High Court" as defined by S. 219 are Assam and Orissa; and the United Provinces has two "High Courts", *viz.*, the High Court of Allahabad and the Chief Court of Oudh.

230. (1) His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

Extra - provincial jurisdiction of High Courts.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

(a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction; or

(b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

NOTES.

This section was explained in Parliament thus:—"This section reproduces substantially S. 109 of the existing Act. It provides that where the High Court exercises jurisdiction in relation to an area outside the Province in which it has its principal seat, then this Act, shall not be interpreted as empowering the legislature of that Province to increase or restrict the jurisdiction of the Court, or prevent the Legislature from having power to make laws for that area. The Legislature having power to make laws for the area can pass laws in regard to the jurisdiction of the Court. The clause ensures that the arrangement now in force in Bengal and Assam shall not be terminated except, say, on the initiative of the Assam Government". (*Parl. Deb.*, Vol. 300, Cols. 296-7).

231. (1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act, be required to relinquish his office at any earlier age than he would have been required so to do, if this Act had not been passed.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges and expenses of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province, by the Governor-General.

NOTES.

Sub-S. (2).—This sub-section would cover the case of the new Province of Orissa—over which the Patna High Court exercises jurisdiction under part IV of the Government of India (Constitution of Orissa) Order 1936.

PART X.

The Services of the Crown In India.

CHAPTER I.

DEFENCE SERVICES.

232. The pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service shall be such as His Majesty in Council may direct.

Pay, &c., of Commander-in-Chief.

NOTES.

This section comes into force only with the establishment of the Federation. Government of India (commencement, etc.), Order 1936. Rule 3 (2).

Under the Act of 1919, the salary and allowances were fixed by the Act itself. (See S. 85 and Sch. II).

The department of "defence" is a reserved department, not subject to the control of the Federal Ministry. S. 11, *supra*.

233. (1) His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct.

Control of His Majesty as to defence appointments.

(2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act or by virtue of his Royal Prerogative.

234. The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air force raised in India extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

Eligibility for commissions in Indian Forces.

NOTES.

"This section has to be read with S. 8, Proviso (iv) and makes it clear that His Majesty can grant Commissions in the Indian Forces to 'subjects of Indian States or natives of territories adjacent to India. Commissions can be given to such members of the Indian Army as the Nepalese'. (*Parl. Deb.*, Vol. 300, Col. 297).

By Cl. 3 of the Letters Patent constituting the office of the Governor-General of India, authority and power is delegated to the Governor-General to grant in the name of His Majesty and on His behalf "Commissions in our Naval Forces, Our Indian Land Forces and our Indian Air Force."

As to the doubts under earlier Indian Legislation of the power of the Governor-General, to grant Commissions in the army, See Ilbert Government of India p. 295 where the matter is set out in great detail.

235. Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval.

Control of Secretary of State with respect to conditions of service.

NOTES.

In all service matters the concurrence of the Secretary of States' advisers is made a condition to the exercise of his powers; S. 261; this was designed as a safeguard to the services and as leading to continuity of policy. The Secretary of State is a political official who changes with each Government, but the advisers are more permanent and can be expected to maintain a uniform policy.

236. Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

237. Any sums payable out of the revenues of the Federation in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defence.

NOTES.

These are charged on the revenue of the Federation as to render them non-votable, but army policy and administration can be discussed in the legislatures for they are not excepted from debate under S. 34.

238. The provisions of the three last preceding sections shall apply in relation to persons who, not being members of His Majesty's forces, hold, or have held, posts in India connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are, or have been, members of those forces.

NOTES.

Speaking of the civilian personnel in the defence services, the Joint Parliamentary Committee observed: "They are clearly entitled to the same kind of rights and protection as they now enjoy as regards their service conditions, although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected. Nevertheless, their rights should not be left in doubt. Their pay and pensions would be included under the head of expenditure required for the reserved Department of Defence, and as such would not be submitted to the vote of the Legislature. There should be no room for misunderstanding on this point." (*J.P.C. Rep. Para 295*).

239. In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown.

In this section the reference to persons who have served in India in the military or civil service of the Crown includes persons who have so served in Burma or in Aden before their respective separations from India.

NOTES.

This reproduces the provision in S. 19 (2) of the Government of India Act, 1915.

CHAPTER II.

CIVIL SERVICES.

General Provisions.

Tenure of office of persons employed in civil capacities in India. 240. (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

NOTES.

Tenure of Office of Civil Servants.—This section reproduces in substance the provisions of S. 96-B of the Government of India Act, 1919. The slight variations in the language of the opening words of this section compared with the old section serve to emphasise that the tenure of all civil services is at pleasure, if ever it was open to doubt. The use of the words "subject to the provisions of this Act and the rules made thereunder" before specifying the tenure gave rise to the argument in *Venkata Rao v. Secretary of State*, (1937) 1 M.L.J. 529=64 I.A. 55, that the Statute gave servants of the Crown a right enforceable by action to hold office in accordance with the rules and that they could only be dismissed as provided by the rules and in accordance with the procedure prescribed thereby. Their Lordships of the Judicial Committee negatived this contention observing: "S. 96-B in express terms states that office is held at pleasure. There is therefore no need for the implication of this term and no room for its exclusion. The argument for a limited and special kind of employment during pleasure but with an added contractual term that the rules are to be observed is at once too artificial and too far-reaching to commend itself for acceptance". (See *Venkata Rao v. Secretary of State*, 1937, 1 M.L.J. 529 (535): 64 I.A. 55). The omission of those words from the section makes it clear that the tenure is an unqualified one at pleasure. The exceptions provided for in the opening words relate to the office of Judges of the High Courts and the Federal Court, and of the Auditor-General of India and the Auditor-General of Home Accounts whose tenure of office is during good behaviour and who are removable only on the ground of misbehaviour or infirmity of mind or body if the Judicial Committee of the Privy Council on reference being made to them by His Majesty report that the official ought in any such ground to be removed.

Sub-S. (2).—If a person not competent to dismiss purports to do so the resulting act is void and inoperative. See *Rangachari v. Secretary of State*, (1937 I M.L.J. 515=64 I.A. 40). Nor can rules be validly made which purport to confer upon authorities inferior to the appointing authority, power to dismiss. (*Ibid*).

Sub-S. (3).—This enacts in the Statute the main part of Rule 55 of the Secretary of State's Classification and Discipline rules.

241. (1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made—

(a) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct;

(b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this subsection shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

(a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

(c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

NOTES.

Recruitment of Public Servants and Conditions of Service.

"All the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation from the Crown, *i.e.*, directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services, and the efficiency and morale of those Services will largely depend in the future on the development in India of the same conventions as have grown up in England.

"But, if such conventions are to develop in India as in England, they must be developed from the same starting-point, from a recognition that the Governor, as the personal representative of the Crown and the head of the Executive Government, has a special relation to all the Crown Services. He will, indeed, be generally bound to act in that relation on the advice of his Ministers, subject to his special responsibility for the rights and legitimate interests of the Services, but his Ministers will be no less bound to remember that advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect both the circumstances and the form in which advice is tendered. We think therefore that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown the heads of the Central (as distinct from All-India) and Provincial Services. Appointments, to these Services would accordingly run in the name of the Governor-General and Governor respectively, and it would therefore follow that no public servant appointed by the Governor-General or Governor will be subject to dismissal, save by order of the Governor-General or Governor." (J.P.C. Rep. Paras. 291-92).

Sub-S. (1).—Express provision to the contrary is contained in Ss. 244 and 245, under which recruitment even in the transferred departments are continued in the hands of the Secretary of State in so far as they relate to the Indian Civil Service, the Indian Medical Service, and the Indian Police Service and an option is reserved to the Secretary of State to appoint persons to the Irrigation Department. Subject to these services and appointments, the Federal and the Provincial Governments are given freedom to recruit their own officers.

This sub-section deals with the regulation of the conditions of Service. Even in regard to officers recruited by the Secretary of State, the Federal or Provincial Government and Legislature as the case may be, have power to prescribe the conditions

of their Services provided they do not relate to pay, leave, pensions and rights in regard to medical attendance [S. 247 (1)] or contravene the rules made by the Secretary of State under S. 247 (2) in regard to the matters enumerated in that subsection, and the general principles set forth in sub-S. (3) herein.

Sub-S. (2).—"The power to regulate the conditions of service of officers not appointed by the Secretary of State, has since 1926 been delegated to the Government of India in the case of Central Services and to Provincial Governments in the case of Provincial Services." (J.P.C. Rep. Para. 289). Cf. Civil Services (Governor's Provinces) Delegations Rules 1926.

Sub-S. (3) (a) and (b).—These apply to persons already in service at the commencement of the Act and Cl. (c) to new entrants. Cl. (a) embodies in statutory form the existing rule 9 of the Classification and control, etc., rules made by the Secretary of State applicable to all existing services; Clause (b) (i) reproduces the substance of rule 56 while (ii) does the same in regard to Rule 58 a and b; (iii) relates to abolition of posts in regard to which compare Rule 40 (1) proviso (2).

Sub-Cl. (c).—Cf. Rule 54 proviso regarding Subordinate Services.

Sub-S. (4).—The same powers subject to the same limitations are conferred on the Legislature as on the Executive.

Sub-S. (5).—This corresponds to sub-S. (5) of S. 96-B of the previous Act with the substitution of the Governor-General and the Governor for the Secretary of State. These expressions would mean normally the Federal or Provincial Ministry, though by reason of the 'special responsibility' of the Governor-General and the Governor to secure to persons in the public service rights provided by or under this Act and the safeguarding of their legitimate interests, they have power to overrule their Ministers.

242. (1) In its application to appointments to, and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Federal Railway Authority.

(2) In framing rules for the regulation of recruitment to superior railway posts, the Federal Railway Authority shall consult the Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with Railway services in India, and particularly to the specific class, character and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of, the Federal Public Service Commission.

(3) In framing the rules for regulation of recruitment of posts in the customs, postal and telegraph services, the Governor-general or person authorised by him in that behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts.

(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5)

there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of subsection (1), in paragraph (b) of subsection (2) and in subsection (5) there were substituted a reference to the chief justice of the court:

Provided that—

(a) in the case of the Federal Court, the Governor-General and, in the case of a High Court, the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be;

(b) rules made under the said subsection (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor-General or, as the case may be, the Governor.

NOTES.

Anglo-Indians.—Speaking of the position of the Anglo-Indian Community in the services, the Joint Parliamentary Committee remarked:—"We have inquired whether any provision in the Constitution Act is desirable in order to secure to a small community, which has established a strong claim to consideration by its history and its record of public service, the maintenance of the special position in some of the Public Services, which it has won by its own efforts. We recall that the Services Sub-Committee of the First Round Table Conference recommended that special consideration should be given to the claims of this community for employment in the services; and we have noted with satisfaction the resolution of the Home Department of the Government of India, dated July 4th, announcing new rules for the determination and improvement of the representation of minorities in the Public Services. In accordance with this resolution the claims of Anglo-Indians and domiciled Europeans who at present obtain rather more than 9 per cent. of the Indian vacancies in the Gazetted railway posts, for which recruitment is made on an All-India basis, will be considered when and if their share falls below 9 per cent. while 8 per cent. of the railway subordinate posts filled by direct recruitment will be reserved for Anglo-Indians and domiciled Europeans. We are of opinion that a reference should be included in the Instruments of Instructions of the Governor-General and Governors to the fact that the legitimate interests of minorities include their due representation in the Public Services. It would, of course, be incumbent on the Governor-General and Governors, in the discharge of their special responsibility for the legitimate interests of minorities, to see that no change was made in the percentages prescribed in the above mentioned resolution without their approval." (J.P.C. Rep. para. 321).

The Original Bill, Clause 231, did not single out the Anglo Indian Community for special mention nor did it deal with the Post & Telegraph Departments in this connection—but merely laid down in general terms the obligation of the Railway Authority to give effect to instructions which may be issued by the Federal Government for the purpose of securing, so far as practicable, to each community a fair representation in the Railway services of the Federation.

This sub-section however crystallises in statutory form the resolution of the Government of India of the 4th July, 1934.

Sub-S. (4).—This sub-section vests in general the right to make appointments to the Staff of the Federal Court and the High Courts to the respective heads of the Court. But this is subject to the Governor-General or Governor requiring the Chief Justice to consult the relative Public Service Commission before making appointments see Proviso (a).

243 Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate

Special provisions
as to police.

ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.

NOTES.

S. 243.—*Mr. Butler* said:—"The Section states that, notwithstanding anything that has gone before in this Chapter, the conditions of service in the subordinate ranks of the various police forces shall be such as may be determined by or under the Acts relating to those forces. Of course, the members of the senior branches will be appointed by the Secretary of State. Police Acts cannot be altered without the previous sanction of the Governor or Governor-General in their discretion (See S. 108 (1) (d) and (2) (ii)). It is those Acts which control the recruitment and conditions of service of the subordinate ranks referred to in the section." (*Par. Deb. Vol. 300 col. 582*).

Recruitment by Secretary of State and provisions as to certain posts.

244. (1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian (Civil) Service, the Indian Medical Service (Civil), and the Indian Police Service (which last mentioned service shall thereafter be known as "the Indian Police") shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this subsection, the Governor-General shall act in his discretion.

NOTES.

Recruitment by the Secretary of State.—Speaking of these services the J. P. Committee observed: "We have found the problem of the future recruitment of the two principal administrative services in India, the Indian Civil Service and the Indian Police, among the most difficult of those with which we have had to deal. The appointing authority must necessarily control the main conditions of service, and if control remains with the Secretary of State, there will to that extent be a derogation from the powers over the officers who are working under it which an autonomous Provincial Government might expect that the Crown should delegate to it. Such a derogation is inevitable in the case of officers recruited by the Secretary of State before the establishment of the new Constitution; but it was urged before us, and has been again emphasised by the British India Delegation in their Joint Memorandum, that future recruitment by the Secretary of State of Officers who serve a Provincial Government is incompatible with Provincial Autonomy, and that the All-India Services ought henceforth to be organised on a provincial basis and recruited and controlled exclusively by the Provincial Governments."

"We appreciate the force of this line of argument; though we have already pointed out the dangerous conclusions which might be drawn from it. But the loyalty with which officers of the All-India Services have served the Local Governments under whom they work, notwithstanding that these Services are under the

control of the Government of India and the Secretary of State, has a long tradition behind it: nor has any Local Government felt difficulty in regard to maintaining discipline and securing full obedience of the Services on account of that control. Moreover, the evidence given before us confirmed the earlier conclusions of the Lee Commission and of the Statutory Commission that, with negligible exceptions, the officers of these services have maintained excellent relations with the Indian Ministers under whom they have been working. Subject to certain qualifications to which we refer hereafter, we are of opinion that recruitment by the Secretary of State for the All-India Services, where it still continues, should come to an end except in the case of the Indian Civil Service and the Indian Police; the functions performed by members of these two Services are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital to the stability of the new Constitution itself, that we could not view without grave apprehension an abrupt change in the system of recruitment for these two Services simultaneously with the introduction of fundamental changes in the system of Government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre. All the information which we have had statistics us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion, as proposed in the White Paper, that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his discretion. The change in that case might be no doubt represented as one of form rather than of substance, since the Governor-General would be acting under directions of the Secretary of State, but for that very reason we are reluctant to make a merely formal change which might at this juncture have an unfortunate effect upon potential recruits. We believe, however, that there is much to be said for the recruitment in India of the prescribed proportions of Indians for the Indian Civil Service as well as for the Indian Police, and recommend this as a subject for consideration by His Majesty's Government." (Report Para 296-7.)

Speaking of the Indian Medical Service they stated: "Under existing arrangements there is no direct recruitment for the Indian Medical Service (Civil). Vacancies are filled from among officers appointed to the Indian Medical Service who have had a period of military duty. We note the view expressed in the Report of the Services Sub-Committee of the first Round Table Conference that there should in future be no Civil Branch of the Indian Medical Service, and that Civil Medical Service should be recruited through the Public Services Commissions. The Sub-Committee however added that the Governments and Public Services Commissions in India should bear in mind the requirements of the Army and of British officials in India, and should take steps to recruit an adequate number of European doctors to their respective Medical Services and to offer such salaries as would attract a good type of recruit. We are however convinced on the information supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services, and that it will be necessary for the Secretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control of Ministers) to require the Provinces to employ a specified member of Indian Medical Service officers. In these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil Services have an overriding claim." (Para. 299).

Explaining the position in Parliament it was said: "It is proposed in the Act to reserve two main services: the Indian Civil Service and the Indian Police. We regard these services as absolutely vital to the future of India, they have vital tasks

to perform, and in order to fulfil these tasks we must adhere to the form of recruitment suggested in the Act.

"I think it would be a mistake, at a time when we are introducing such vast changes in the Government of India, to make this immense change as well. Certain services have been transferred; we intend these two important services should remain. Following the advice we have received, we consider that it would be a mistake to make another big change in the method of recruiting at a time when we are making these changes in the Government of India. There is no question of absolute finality in our decision. The Joint Select Committee recommended that after a certain period there should be an inquiry into the operations of these services. I will not develop that point, because presumably we shall have an opportunity of discussing the matter on a later section which provides the necessary machinery to operate any future change which is made. There is, therefore, this provision for a future enquiry". (*Par. Deb. Vol. 300, Cols. 628-29*).

Sub-S. (2).—This sub-section enables the Secretary of State to make recruitment to the reserved departments of defence and external affairs. As to the ecclesiastical department, *see* S. 269.

Sub-S. (3).—The strength of the All-India Services was always determined by the Secretary of State in Council, *see* rule 24 of the classification rules. The obligation to lay before Parliament a statement of vacancies and appointment is however new.

Sub-S. (4).—This sub-section has had a curious history. The White Paper proposed that at the end of 5 years an inquiry should be held into the question of future recruitment for these services and that His Majesty's Government should decide the matter in the light of such an enquiry. The J. P. C. however deprecated the idea of fixing a definite and unalterable date for the holding of an enquiry of this kind. They suggested, however, that the Constitution Act should make provision for the present arrangement for recruitment, etc., to be varied without an amending Act. Following this recommendation, Clause 251 of the Bill provided that His Majesty in Council may transfer to such authority as may be specified in the Order all or any of the powers conferred on the Secretary of State with respect to the making of appointments. This clause was attacked by members of the Conservative party during the Committee stage, and the Government agreed to drop the section, stating that they saw in principle no difference between an alteration by Order in Council and by Parliamentary enactment but that they still believed that at some future time the recruitment would have to be vested in Indian Authorities, and that provision would be made at some appropriate place providing for an enquiry. The provision made in sub-section (4) purports to carry out that undertaking. Explaining the sub-section *Sir Samuel Hoare said*: "The Joint Select Committee accepted the view that, at some time in the future, an inquiry would be necessary into the changed conditions of service. It is very important, from every point of view, that we should make it clear that we have not abandoned the attitude that, at sometime in the future we have to have an inquiry. The conditions of service are bound to change in the nature of things. How far those changes should react upon the actual position of civil servants is a question for Parliament to decide in the future. We, however, desire to make it clear that we contemplate an inquiry at some time in the future, and that it is very important that the Secretary of State should be kept regularly informed by the Governor-General as to the conditions in existence, and as to any changes that are taking place. It is on that account that I regard sub-section (4) as an integral part of the proposal that I am making. The proposal is, in the first place, that existing conditions go on until Parliament otherwise determines—and that carries out that undertaking which I gave—and, secondly, that the Secretary of State here should be kept regularly informed as to how the constitutional changes are reacting on service conditions, and that the Governor-General should be empowered to make recommendations to the Secretary of State upon the subject. The position of Parliament is not compromised. At the same time we make it clear, both to the House and Indians in India, that we have not abandoned the position maintained in the Joint Select Committee, that, in the nature of things, the constitutional changes must react upon service conditions in the future, and that that reaction must, at some time in the future, involve an inquiry. (*Parl. Deb. Vol. 302, Cols. 1001-1002*).

245. Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation.

Special provisions as to irrigation.

NOTES.

Irrigation Service.—It was stated in Parliament: "Under the Act of 1919 the Irrigation and Forestry conservancy were provincial subjects, but owing to their importance as far as the welfare of the peoples of India were concerned, these services were retained as reserved subjects under the control of the Governor and the Executive Council. These two services in the superior grade were maintained as All-India Services and recruited by the Secretary of State. The Lee Commission in 1924 retained that system and indeed laid down that for the future the Irrigation Service should be 40 per cent. British and that 40 per cent. of the Forestry Service should also be British. The Statutory Commission and Joint Select Committee felt very strongly the necessity for continued European recruitment, and yet the Statutory Commission, in spite of their very strongly expressed opinion, explicitly refrained from making a recommendation, and merely suggested that the matter should be reconsidered." (*Parl. Deb. Vol. 300, Col. 584 Et-seq.*)

The original proposal in the Bill was that the Secretary of State should be given the power to start recruiting again for the Irrigation Service if he was satisfied that the Service was deteriorating through want of European officers. It was pointed out in the Committee that it might be no great advantage to allow the Secretary of State to resume recruitment when in the interval some fatal injury might have been inflicted on the Service. The present section gives the Secretary of State power to recruit in cases where he thinks it is necessary from the beginning of the operation of the reforms. "He will have to judge the cases on their merits, but it does not at all follow that what would be done in the case of the Province would apply to another. It will, however, be his duty to satisfy himself that the recruitment conditions are satisfactory from the beginning of the changes." (*Parl. Deb. Vol. 302, Cols. 1005-6*).

That the appointment to the Irrigation Services is not a Statutory obligation on the Secretary of State as in the case of the services enumerated in S. 244, is shown by the use of the expression "may" in this section as contrasted with "shall in the earlier section.

246. (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

(a) be kept vacant for more than three months; or
(b) be filled otherwise than by the appointment of such a person as aforesaid; or
(c) be held jointly with any other such post.

(2) Appointments and postings to the said posts (hereinafter in this Part of this Act referred to as "reserved posts") shall—

(a) in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment;

(b) in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

NOTES.

S. 246.—Cf. S. 98 Government of India Act, 1915, and the list of offices reserved to the Indian Civil Service set out in Sch. III of that Act.

This section is machinery for ensuring that persons recruited by the Secretary of State under S. 244. are provided with appointments.

The rules regarding the determination of the strength including the number and character of the posts of the All-India Services by the Secretary of State subject to temporary additions by the Governor-General or the Local Government is now contained in "Classification, etc., rules" 24 and 10.

The provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than 3 months embodies in the Statute the present "Classification, etc.," Rule 25.

The prohibition in Cl. (b) against the appointment of anyone who is not a member of an "All-India Service to posts borne on the cadre of such service, except with the sanction of the Secretary of State" embodies in Statutory form the present Classification Rule 27.

The rules made by the Secretary of State fixing the 'listed' posts to which it would be obligatory on the part of the Governors and Governor-General to appoint persons recruited by the Secretary of State—are laid before Parliament, so that Parliament may have a voice in fixing the proportion of the British element of the Services.

These rules are beyond the powers of the Indian Legislature to alter. S. 110 (b) (iii).

Sub-S. (2) —It was stated in Parliament:—"We certainly intend to include transfer, and we are considering whether the word "postings" would include transfer". (*Parl. Deb., Vol. 300. Col. 637*).

Conditions of service, pensions, &c. of persons recruited by Secretary of State.

247. (1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall—

(a) as respects pay, leave and pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;

(b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorized by the Governor-General to make rules for the purpose and, as respects persons serving in connection with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose:

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.

(2) Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment.

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province:

Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid, and government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable:

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

NOTES.

S. 247: Conditions of Service Sub-S. (1).—This section empowers the *Secretary of State*—(note the distinction between the Secretary of State and the Secretary of State in Council) to make rules relating to the officers to be recruited and appointed by him after the commencement of Part III. Under S. 276 the existing rules made by the Secretary of State in Council are continued and are deemed to be rules made under the appropriate provisions of this Act *in regard to officers recruited by the Secretary of State, under S. 247 (1).*

The power of the Secretary of State to make rules relating to officers appointed before the commencement of Part III by the Secretary of State in Council is contained in S. 250, which renders this section applicable to those officers also.

The power of the authorities in India—the executive or the Legislature—to prescribe the conditions of the Service of officers in Civil employ under S. 241 (2) is subject to the rules made by the Secretary of State in regard to officers recruited by him. In regard to these services the power of the Federal and Provincial Govern-

ments to prescribe conditions of service is nominal merely. It does not in any event extend to prescribing pay, leave, pensions or medical attendance; and even in regard to other matters can exist only in so far as the Secretary of State has not chosen to make rules. Under the terms of Cl. (b) rules made by him would supersede any made by the Governments in India.

The proviso at the end of sub-section (1), should as regards persons appointed by the Secretary of State who are in service at the commencement of Part III be read as explained by S. 250 (3). So that what is guaranteed to the existing officers is not merely those conditions as to pay, etc., in force at the date of their appointment, but those which are in force on a future date on which the Secretary of State's rule might come into force.

The control of the Federal and Provincial Ministry is further cut down by the provisions in sub-section (2) and (3), which is in addition to the "special responsibility" of the Governor-General and Governor for safeguarding the "legitimate interests of the services."

Sub-S (4).—The salary and allowances are charged on the revenues of the Provinces or of the Federation, whichever they happen to serve and are thus not subject to the vote or control of the Legislature. This merely reproduces the earlier statutory provision, (*Cf.* S. 67 A (3) (iii) and (iv) and S. 72 D (iv) and (v) Government of India Act, 1919).

Sub-S. (5).—The pensions of all officers recruited by the Secretary of State are charged on the "revenues of the Federation" though S. 156 provides machinery for later adjustment between the Provincial and the Federal Revenues.

The reason for so charging these payments on the Revenues of the Federation may best be stated in the words of Sir Samuel Hoare:—"They (pensioners) wish to see in black and white that there is money there which can be got at and which can be used for the payment of pensions in any emergency. Under the terms of the Act taking S. 14 in conjunction with the special responsibilities under S. 12, the Governor-General will, in his special responsibilities, act under the direction and control of the Secretary of State. Those two sections together with S. 157 will ensure that, if necessary, the Secretary of State can instruct the Governor-General to see that the money is actually paid and remitted to this country. The only thing that would be necessary would be for an order to be given. I cannot conceive that the money will not be sent by the Federation to be paid into this country, but if there is any danger, all that the Secretary of State has to do by the operation of S. 14, in conjunction with S. 12 operating on the special responsibilities for that service and then operating on S. 157 is to give a simple order. That is in fact, the machinery necessary in order that the money shall be paid".

"There are various other sections to which I will refer so as to make assurance doubly sure. In S. 247, these pensions are charged upon the Revenues of India, and in Ss. 43 and 44, if the Governor-General has, through any unfortunate occurrence, to obtain further money, he will be able to pass a taxing Bill enabling him to obtain that money in a case of emergency". (*Parl. Deb., Vol. 302, Cols. 580-851.* See further notes to S. 157).

Sub-S. (7).—This reproduces the residuary powers of the Secretary of State in regard to officers appointed by him which was formerly contained in S. 96 B (5) of the previous Government of India Act.

248. (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General and, if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine

Rights in respect of complaints, appeals, &c.,

into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

NOTES.

Sub-S. (1).—Cf. the second para of S. 96 B (i) of the Government of India Act, 1919.

Sub-S. (2).—Under Decolution Rule 10, the personal concurrence of the Governor was made a requisite in the case of orders referred to in this sub-section.

Sub-S. (3).—The appeal to the Secretary of State was formerly provided under "Classification, etc., Rules" 56, 57 and 58.

249 (1) If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a province, such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

NOTES.

S. 249—The provision as to the special rights herein provided for officers appointed by the Secretary of State was thus explained by the J.P.C.: "In addition to these rights and safeguards common to all members of the Public-Services, officers appointed by the Secretary of State are also to have a special right to such compensation for the loss of any existing right as the Secretary of State may consider just and equitable. It may be observed that some of the existing service rights of officers appointed by the Secretary of State set out in Part I of Appendix VII, are conferred by the present Government of India Act and could only be modified or abolished by an amending Act; others are embodied in statutory rules made by the Secretary of State in Council. As things stand at present the latter could no doubt be taken away or modified at any time by the same authority; but the whole body of service rights, from whatever source derived, may properly be regarded as forming a single Code which the

members of the All-India Services now serving may equitably claim should not be varied (at least without a right of compensation) to their disadvantage, and we concur with the White Paper proposal, which we are glad to observe had the approval of the Services Sub-Committee of the First Round Table Conference.

Further, in addition to the provision for compensation for the loss of service rights, it is proposed that the Secretary of State should be empowered to award compensation to any officer appointed by him in any other case in which he considers it to be just and equitable that compensation should be awarded. This is no doubt a very wide and general power; but it is impossible to foresee and provide in a statute against all the contingencies that may arise in the administration of a great Service and we do not, therefore, dissent from the proposal. The Secretary of State assisted by his Advisers may be trusted to preserve a reasonable balance between the interests of the Services on the one hand and those of Indian Revenues on the other." (J.P.C. para 285 & 286).

The benefits of this section are available to existing officers as well. S. 250 (1).

When the reforms of 1919 were introduced and certain departments in the Provinces were transferred to the control of Minister, officers in the following "All-India Services" were permitted to retire on proportionate pensions where they were not permanently employed directly under the Governor-General in Council—Indian Civil, Police, Forest, Educational, Agricultural Engineering; Veterinary & Medical Services and Officers of the Army holding other than listed posts on the Provincial cadre. See rules by the Secretary of State in Council published in the Government of India Home Department Notification dated 1st March 1924—which has been subject to amendments from time to time).

Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.

250 (1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India as they apply in relation to persons appointed to a civil service or civil post by the Secretary of State.

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply in relation to any person who—

(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post;

(b) holds or has held any civil post under the Crown in India and is, or was when he was first appointed to such a post, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post, shall be construed as a provision that no such rule shall have effect so as to give any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, the second of the four last preceding sections (which relates to the conditions of service, pensions, &c., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor-General in paragraph (b) of subsection (1) thereof and in subsections (2), (3) and (7) thereof there were substituted a reference to the Federal Railway Authority.

(5) Any liability of the Federation or of any Province to or in respect of any person appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

NOTES.

S. 250.—Section 247 enables the Secretary of State to frame rules for the conditions of Services of persons to be recruited by him under Ss. 244 and 245, i.e., in regard to those who are appointed after the commencement of the Part III of the Act. That would be apparent from the use of the expression, "the Secretary of State" in S. 247 as distinguished from the "Secretary of State in Council" which is the nomenclature of the appointing authority prior to April, 1937.

This section enables the Secretary of State to frame rules for persons already in service and continues the power he already had in regard to them under S. 96-B and the Classification rules.

Sub-S. (2) permits the application of these rules to persons holding what are known as "listed" posts (*Cf.* Schedule III to the Government of India Act, 1919) the rules applicable to officers appointed by the Secretary of State.

Sub-S (3) is designed to perpetuate to persons already in service appointed by the Secretary of State in Council or holding listed posts—the extra salary and allowances, etc., sanctioned to them as a result of the recommendations of the Lee Commission. And they seem to be placed on a more secure footing than even under S. 96 B.

Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home Accounts.

251. The provisions of this Part of this Act shall apply in relation to appointments to, and to persons serving on, the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered in India:

Staff of High
Commissioner and
Auditor of Indian
Home Accounts

Provided that—

(a) appointments to the staff of the Auditor of Indian Home Accounts shall be made by him subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion; and

(b) in relation to that staff the functions of the Governor-General under this Part of this Act shall be exercised by him in his discretion.

NOTES.

S. 251.—Explaining the reason for the proviso, Sir Samuel Hoare said:—"I think there are particular reasons why these appointments should be made by the Governor-General in his discretion. In the case of appointments to the staff of the

Auditor, of Indian Home Accounts, the staff will, I suppose, be mainly British, and that may be to some extent a justification for this form of appointment. There is another reason, which is even stronger. This department will be doing work outside the work connected with the departments of the responsible Ministers in India. For instance, the Auditor of Home Accounts will audit the accounts of the reserved departments, the political departments, and so on, for which the Governor-General is responsible in his discretion. That being so, I think it is essential that the appointments should be in the discretion of the Governor-General, in view of the fact that, as I have said, two sets of work will be done by these officials on the one hand, on behalf of the responsible Government and on the other hand on behalf of the Governor-General and the India Office". (*Parl. Deb.*, Vol. 300, Col. 738).

252. (1) All persons who immediately before the commencement of Part III of this Act were members of the staff of the High Commissioner for India, or members of the Staff of the Auditor of the accounts of the Secretary of State in Council, shall continue to be, or shall become, members of the staff of the High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts.

(2) All such persons as aforesaid shall hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise, as theretofore, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed.

(3) The salaries, allowances and pensions payable to, or in respect of, such of the persons aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature.

Special Provisions as to Judicial Officers.

Judges of the Federal Court and High Courts 253. (1) The provisions of this chapter shall not apply to the judges of the Federal Court or of any High Court:

Provided that—

(a) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that court:

(b) nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that service as may appear to His Majesty to be properly applicable in relation to them:

(c) nothing in this section shall be construed as excluding the office of judge of the Federal Court or of a High Court from the operation of the provisions of this chapter with respect to the eligibility for civil office of persons who are not British subjects.

(2) Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or

in respect of any person who, having been a judge of a High Court within the meaning of this Act or of the High Court at Rangoon, retired before the commencement of the said Part III shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, continue to be payable in accordance with those rules and shall be charged on the revenues of the Federation.

(3) Any liability of the Federation or of any Province to or in respect of any person who is, at the commencement of Part III of this Act, a judge of a High Court within the meaning of this Act, or to or in respect of any such person as is mentioned in subsection (2) of this section, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, be deemed for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

254. (1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment,

(3) In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge

NOTES.

S. 254: Recruitment and Appointment of District Judges.—This section carries out the recommendation of the Joint Parliamentary Committee in regard to the recruitment and appointment of District Judges.

The Joint Parliamentary Committee observe: "In the case of District Judges or additional District Judges, first appointment should, if the candidate is a member of the Indian Civil Service, be made by the Governor on the recommendation of the Minister, after consultation with the High Court. A recommendation by the Minister for the appointment of a member of the subordinate judicial service should only be made with the approval of the Public Service Commission and of the High Court. A recommendation for a direct appointment from the Bar should be made from among persons nominated by the High Court, subject to any general regulations in force regarding communal proportions. A District Judge should only be promoted (except in the case of automatic time scale promotions) on a recommendation by the Minister after consultation with the High Court; and the same rule should apply to postings. In all the cases covered by this paragraph we think that the Governor should have a discretion to reject a recommendation if he does not concur with it". (J.P.C. Rep. para 34).

Sub-S. (3).—The offices of Chief Judge of the Small Cause Court, Chief Presidency Magistrate and Assistant Sessions Judge did not find a place in the sub-section in the original Bill, but were added during the Committee stage.

255. (1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province.

In this section, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province.

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

NOTES.

S. 255.—Appointment of Munsifs Under S. 7 of the Madras Civil Courts Act, 1873, the recruitment of Munsifs in Madras was vested in the High Court; a similar provision was found in the Civil Courts Acts of a few other Provinces. There were however several Provinces where the power of appointment was vested in the Local Government. Following the recommendations of the Joint Parliamentary Committee a uniform system of appointment and control over the subordinate judiciary has been effected by this section, with the consequence that S. 7 of the Madras Civil Courts Act, is now repealed, (*see* Adaptation of Laws Order 1937) and the High Court is no longer the appointing authority in regard to Munsifs. The Joint Parliamentary Committee stated:—"In the case of Subordinate Judges and Munsifs, the Provincial Government, that is to say, the Governor advised by the appropriate Minister—after consultation with the Public Service Commission and with the High Court should make rules defining the standard of qualifications for candidates seeking to enter the Judicial Service. Candidates should be selected for appointment by the Public Service Commission, in consultation with the High Court, subject to any general regulations made by the Provincial Government as to the observance of communal proportions. The Minister would be informed by the Commission of the candidate or the candidates selected by them, and the appointment would be made by the Governor on the Minister's recommendation. The Public Service Commission would of course act in an advisory capacity only, but we cannot conceive that any Minister would reject their advice or recommend an appointment without it. We think it of first importance that promotions from grade to grade or from the rank of Munsiff to that of Subordinate Judge, as also the leave and postings of Munsifs and Subordinate Judge, should be in the hands of the High Court, subject to the usual rights of appeal of the officer affected." (J.P.C. Para 339).

In regard to the appointment of munsifs and subordinate judges therefore the powers of the High Court are hereafter confined to being consulted along with the Public Service Commission on making rules prescribing the qualifications requisite for appointment to these posts.

256. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working, or with the Chief Presidency magistrate, as the case may be.

Special Provisions as to Political Department.

257. (1) Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States.

(2) Notwithstanding anything in the preceding subsection, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as theretofore or not less favourable conditions, and in relation to those persons anything which might, but for the passing of this Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to the Secretary of State, acting with the concurrence of his advisers.

(3) Nothing in this section shall be construed as affecting the application to such persons of the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure.

NOTES.

S. 257 —Formerly these officers, under Class I of the Central Services were directly recruited by the Secretary of State *see* Rule 29 Classification, etc., Rules.

Provisions for the protection of certain existing officers.

258 (1) No civil post which, immediately before the commencement of Part III of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except—

(a) in the case of a post in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;

(b) in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial service, and no order upon a memorial submitted by any such person, shall be made except—

(a) in the case of a person who is serving or has served in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;

(b) in the case of a person who is serving or has served in connection with the affairs of a province, by the Governor of the Province exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor-General or the Governor, as the case may be, there was substituted a reference to the Secretary of State.

NOTES.

S. 258.—This section has to be read with S. 241 which enables the Governments in India, and the Indian Legislature to frame rules regulating the conditions of service including pay, pension, etc., of all officers in Civil employ.

In regard to persons recruited by the Secretary of State, under Ss. 244 and 245, or those already in service who were appointed by the Secretary of State in Council (S. 250) the power to make rules regarding pay, pension and medical attendance is exclusively vested in the Secretary of State [S. 247 (1)]. In regard to other matters the Secretary of State can make rules, but need not, and the authorities specified in S. 241 are competent to make rules; only the rules so made are liable to be superseded by rules made by the Secretary of State if he should choose to do so.

As regards persons not appointed by the Secretary of State, and not holding listed posts [S. 250 (2)], ignoring the case of military officers in Civil employ [S. 250 (2) (b)], the power of the Indian authorities to prescribe conditions of service are supreme. Two particular matters are singled out and are placed on a somewhat higher footing in which the Governor-General and Governor are given an overruling voice—abolition of posts in certain services and the pay, allowance and pension, of a smaller class of officers.

Under the Classification Rules of 1930, the services are classified into 6 classes. The 1st the All India Services, which comprise 10 services—are recruited by the Secretary of State in Council and therefore fall within S. 250. The next category Central service Class I comprise twenty services—under the control of the Government of India (Schedule II).

The Central Services Class II—are those who are appointed by the Governor-General in Council and are under the administrative control of the Governor-General in Council or of a Local Government other than that of a Governor's Province, i.e., those who are in Chief Commissioners Provinces.

The services under the administrative control of the Local Governments of Governor's Provinces are classified into 3 classes (1) Provincial (2) Specialist and (3) Subordinate. The third is a residuary class from which "Ministerial, petty, inferior or menial servants" might be excluded by notification of the Local Government under Rule (4).

It will be seen that so far as the Government of India is concerned that the Federal Ministry has absolute powers to prescribe conditions of service of Central service class II and Railway Service class II and with the concurrence of the Governor-General—all the services under their control excluding the All India Services. The Provincial Ministers have similar unfettered powers over "Specialist services" and "Subordinate services"; and with the concurrence of the Governor, they can affect the conditions of service of the "Provincial Services" also.

259. (1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation, on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, on the revenues of that Province:

Provisions as to certain persons serving in or before 1924.

Provided that, if any such person as aforesaid is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the railway fund.

(2) Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation.

(3) The provisions of the last preceding subsection shall also apply in relation to persons who retired before the first day of April, nineteen hundred and twenty-four, and before they retired belonged to services or held posts which were as from the said date classified as superior services or posts, or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified.

NOTES.

S. 259.—*Cf.* Appendix VII Part III, White Paper, 1933.

The salaries and allowances of the officers mentioned in the section was non-votable under the Government of India Act, 1919. S. 67 A (3) iii (c) and S. 72-D (3) (d). By rules made by the Secretary of State in Council the services specified below were classified as Superior services and a large number of miscellaneous posts were brought within the scope of the section; The Indian Civil, Police, Forest, Engineering, Medical, Educational, Agricultural; Audit and etc.; Accounts; Military Accounts; customs, Telegraph Engineering, Geological Survey, Meteorological, Railway Engineers, Traffic, (Traffic and Power), Stores; Railways; Coal Department; Loco and Wagon, Archaeological, Zoological Survey, Mines; etc.

260. (1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in India, retired from the service of His Majesty before the commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not passed, be paid out of the revenues of the corresponding Province and in any other case shall be paid out of the revenues of the Federation.

General provisions to persons retiring before commencement of Part III.

(2) Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I, a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden.

Miscellaneous.

261. The powers conferred by this and the subsequent chapters of this Part of this Act on the Secretary of State shall not be exercisable by him except with the concurrence of his advisers.

Secretary of State to act with concurrence of his advisers.

NOTES.

S. 261.—For the advisers of the Secretary of State. (*See* Part XI, *infra*).

The concurrence of the advisers has been provided as a safeguard to the services.

The obligation to secure the concurrence of his Council before making rules in respect of the services was formally contained in S. 96 E Government of India Act, 1919.

The Secretary of State is not bound statutorily to consult his advisers or to follow their advice except in regard to "service" matters. [See S. 278 (C) *infra*].

262. (1) The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office, being an office specified in the declaration.

Eligibility for office of persons who are not British subjects.

(2) The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration.

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India.

Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India:

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor-General or the Governor of a Province shall exercise his individual judgment.

NOTES.

S. 262. Eligibility of persons other than British subjects.—Cf. S. 96-A. Government of India Act, 1919.

The purpose of this section was thus explained in Parliament:—"This section has been drawn up to ensure that, as far as reasonable, only British subjects shall be employed in the Services of the Crown in India. I think that was the general intention, and that is expressed quite specifically in sub-S. (3) of the new Clause. It is quite obvious, however, that that provision cannot be made absolute. In the first place, the position of the Federal States has to be considered. Clearly one cannot expect States to come into a Federation if their subjects are to be deprived for ever from serving under that Federation. In addition to that, there are two other categories mentioned in the Clause—natives of a specified tribal area and any named native of any territory adjacent to India. That really refers to Nepalese subjects. It is necessary to make these specific exceptions to enable us to continue to employ Gurkhas. We have employed Gurkhas, and shall continue to do so. There have been occasions in the past when, quite apart from the inhabitants of India, persons of non-Indian descent who were not British subjects have been employed by the Government of India, and it may be that they will be so employed again, but under this clause they will be employed under a contract. They will only be employed upon the express individual judgment of the Governor-General or, in the case of the Provinces of the Governor, and they will be employed only temporarily. In the past they have been employed under specific contracts.

"The type of person one has in mind are specialists in some particular subject who are necessary to undertake a particular job, especially people like archaeologists, who are more or less an international body. I do not know whether, at the moment, any

Foreign Archaeologist is being employed on excavations in India, but I do know that in British Malaya, which is under the Colonial Empire, a Dutchman who has had particular experience of excavation work in Java is being employed. In the case of specific and tropical diseases it may be desirable now and again to employ temporarily, under a contract, a particular Foreign Scientist. (*Par. Deb., Vol. 301, Cols. 81 and 85.*)

Para. 15 of the Government of India (Commencement, Etc.) Order 1936 provides: "For a period of twelve months from the date of the Commencement of Part III of the new Act a person who immediately before the said date was holding an office under the Crown in India shall not be disqualified from continuing to hold that office by reason of the fact that he is not a British subject and that no declaration entitling him to hold the office has been made under section two hundred and sixty-two of the new Act."

263. If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one or more Provinces, or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor, or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

CHAPTER III.

PUBLIC SERVICE COMMISSIONS.

Public Service
Commissions.

264. (1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

(2) Two or more Provinces may agree—

(a) that there shall be one Public Service Commission for that group of Provinces; or

(b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces, and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation if requested so to do by the Governor of a Province may, with the approval of the Governor-General, agree to serve all or any of the needs of the Province.

(4) References in this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.

NOTES.

S. 264.—The case for a "Public Service Commission" was thus set out by the Lee Commission of 1924:—"Wherever democratic institutions exist, experience has shown that to secure an efficient Civil Service it is essential to protect it so far as

possible from political or personal influence and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the 'spoils system' has taken its place, an inefficient and disorganised Civil Service has been the inevitable result and corruption has been rampant. In America a Civil Service Commission has been constituted to control recruitment of the Services, but, for the purposes of India, it is from the Dominions of the British Empire that more relevant and useful lessons can perhaps be drawn. Canada, Australia, and South Africa now possess Public or Civil Services Acts, regulating the position and control of the Public Services Commission, to which the duty of administering the Acts is entrusted. It was this need which the framers of the Government of India Act had in mind when they made provision in S. 96-C for the establishment of a Public Service Commission to discharge "in regard to recruitment and control of the Public Services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council". (Lee Commission Report para. 24).

A Central Public Service Commission was set up in 1926 for the All India and higher services and its constitution was in accordance with the terms of S. 96-C of the Government of India Act, 1919.

The Lee Commission refrained from recommending the extension of the control of the Central Public Service Commission to the Provincial services and suggested that the Provinces themselves might set up such Commissions. The only Province which set up such a commission was Madras; Punjab however passed the necessary legislation but no Commission was set up because of lack of finance.

The Statutory Commission recommended the setting up of Service Commissions in all the Provinces in order to relieve ministers from the technical work of recruitment and to prevent their being exposed to the charge "however illfounded of using their position to promote family or communal interests at the expense of efficiency or just administrations of the services".

The recommendation was accepted by His Majesty's Government and was embodied in the White Paper (Proposal 195). The Joint Parliamentary Committee endorsed this recommendation in these terms, "We regard it as essential that each Provincial Government, should be able to avail itself of a Public Service Commission."

265. (1) The chairman] and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion:

Composition and staff of Commissions.

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.

(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations—

(a) determine the number of members of the Commission, their tenure of office and their conditions of service; and

(b) make provision with respect to the numbers of staff of the commission and their conditions of service,

(3) On ceasing to hold office—

(a) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;

(b) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission.

or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India;

(c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

266. (1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) The Secretary State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding subsection, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.

(4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federa-

ration or a Province or, in the case of the subordinate ranks of the various police forces in India, as respects any of the matters mentioned in paragraphs (a), (b), and (c) of subsection (3) of this section.

NOTES.

Their function, advisory—Speaking of the functions of the Public Service Commission Sir Samuel Hoare said:—"It was the definite view of the Joint Select Committee, and it is the definite view of my advisers both here and in India, that the Public Service Commissions had much better be advisory. Experience goes to show that they are likely to have more influence if they are advisory than if they have mandatory powers. The danger is that if you give them mandatory powers you then set up two governments in a Province and two governments at Centre, and there is everything to be said against a procedure of that kind. From many points of view it is much better that they should be advisory. (*Par. Deb.* l'cl. 300, Col. 858).

267. Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission:

Power to extend functions of Public Service Commissions

Provided that—

(a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or as the case may be, of the Governor in his discretion; and

(b) it shall be a term of every such Act that the functions conferred by it shall not be exercisable—

(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State; or

(ii) where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

268. The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province:

Expenses of Public Service Commissions. Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of chapter II of this Part of this Act charged on the revenues of the Federation.

CHAPTER IV.

CHAPLAINS.

269. (1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State and the provisions of Chapter II of this Part of this Act shall, with any necessary modifications, apply in relation to that establishment and to persons appointed as chaplains by the Secretary of State or by the Secretary of State in Council, as they apply in relation to the civil services to which appointments are to be made by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State in Council, and for the purposes of the provisions of chapter II relating to

Provisions as to chaplains.

persons who retired before the commencement of Part III of this Act the said establishment shall be deemed to be an all-India service.

(2) So long as an establishment of chaplains is maintained in the Province of Bengal, two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains in that Province.

This subsection applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal.

(3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

NOTES.

The Ecclesiastical Department —The department of ecclesiastical affairs is a reserved department. (S. 11). Explaining the origin of this department the Joint Parliamentary Committee stated:—

"The origin of the Ecclesiastical Department is to be found in the obligation imposed by the Charters of the East India Company to provide chaplains on their ships and at their stations; and since 1858, when the rights and obligations of the East India Company finally passed to the Crown, the Government of India have rightly regarded it as their duty to provide for the spiritual needs of British troops stationed in India and, so far as circumstances admit, of the European members of the Civil Services. The Secretary of State in Council has, under his general powers, established and maintained for this purpose a cadre of official chaplains appointed by himself, and has authorised grants-in-aid out of Indian revenues for the maintenance of churches and of a certain number of non-official chaplains, the present annual expenditure of the Department being approximately 40 lakhs. Since the Indian Church Act, 1927, and the Indian Church Measure of the same year, by virtue of which the Church in India became an autonomous body, Indian Bishops are no longer appointed by the Crown." (J. P. C. para. 185.)

Sections 115 and 117 to 121 of the Government of India Act 1919, have been repealed by the Indian Church Act 1927 (17 and 18 Geo. 5 Ch. 40).

The Joint Parliamentary Committee recommended that the Constitution Act should specify the maximum figure above which the annual appropriation for ecclesiastical expenditure cannot go. Provision has accordingly been made in S. 33 (3) (e) under which the expenditure is not to exceed 42 lakhs of Rupees a year exclusive of Pension charges.

Sub-Ss. 2 and 3 reproduce the provisions of S. 122 (1) and (2) of the Government of India Act 1915.

CHAPTER V.

GENERAL.

270. (1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

(3) For the purposes of this section—

the expression "the relevant date" means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation;

references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner's Province;

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

NOTES.

Indemnity for the past—This section carries out the recommendations of the Joint Parliamentary Committee in Para 283 of their Report. They stated "The White Paper proposes that there shall be a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and ~~done or purported~~ to be done in the execution of duty. In view of threats which have been made in certain quarters, especially against the Police, we think that it is justifiable to give this measure of protection to men who have done no more than their duty in very difficult and trying circumstances."

Explaining the section, it was stated in Parliament: "The Section deals with past acts. It does not take the exact form of an indemnity, but it is an indemnity of a kind. As far as the future is concerned, obviously it would not be right to give what would appear to be in any sense an indemnity in advance. There are no doubt special circumstances which make it desirable to have something in the nature of an indemnity. In regard to the future, as I have indicated, obviously it would be very undesirable, and indeed wrong, to appear to be casting a cloak in advance irrespective of the type of charge that might be made or the liability or claim that might be made. (*Par. Deb. Vol. 300, Col. 877*)."

In regard to the future the protection is afforded by the next section, Section 271.

Sub-S. (1).—This applies to cases where in respect of acts done prior to the "relevant date"—no proceedings had been started in Court against the official. The consent of the Governor or the Governor-General as the case may be 'acting in his discretion' is constituted a condition precedent to the institution of the proceedings.

Sub-S. (2).—This deals with cases which have been already instituted and are pending in Court on the "relevant date". The Court is directed to dismiss the proceedings unless it is satisfied that the acts complained of were not done in good faith. The Joint Parliamentary Committee recommended that the certificate by the Governor or Governor-General as the case may be that the act was done in good faith, should be conclusive and binding on the Court; this has not been accepted and the matter has been left to the Courts to decide.

271. (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only—

(a) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and

(b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment:

Provided that nothing in this subsection shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province, as the case may be.

NOTES.

S. 271: Protection of Public Servants.—Speaking on this section the *Solicitor-General* said:—“In order to reassure these officials, Indians just as much as British, who are anxious that there shall be no doubt that there is proper protection against vexatious and unjustifiable criminal proceedings, we propose to give the Governor or the Governor-General the last word. But it is most undesirable and entirely against the best interests of the services of India, or officials in any country where British ideas prevail, that you should give, or tend to give, the impression that they are hedged off and free to do as they like, and that no one can get at them. On the other hand, it is equally necessary, particularly in a country like India, that where there is a danger of their being harassed by vexatious or maliciously-motivated proceedings, they should be given fair and proper protection. After all, it not only causes mental anxiety, and so on, to a Magistrate; but is bad for the administration of law and justice if a Magistrate, because some person thinks he has a grievance, should be put into the dock and have to justify his action.

“At present there is nothing to prevent a person issuing a writ, or whatever may be the proper technical term in India, against an official for damages for some civil wrong which he alleges has been committed. I do not think it would be right as a permanent part of the Constitution, as it were, to impose a barrier, even though it be a discretionary barrier, between a member of the public and the official whom he is

saying has invaded his private rights. After all, civil actions would extend to such cases as motor accidents; and they would extend no doubt to unjustified assaults. I suppose it might be possible to conceive a libel in which words might have been written or uttered in the course of carrying out official duties."

"It is a great principle, and we do not wish to invade it, that if an ordinary member of the public has a wrong committed against him, be it by an official or a non-official person, he has the right to issue his writ and claim his redress in the Courts. We think it would be undesirable to put up, or even to attempt to put up, as a permanent part of this Constitution, a barrier in cases where officials are concerned. But it seems to us that what really affects an official who has a civil claim made against him is the question of costs and the question of any damages that he may have to pay." (*Par. Deb. Vol. 300, Cols. 879 et seq.*).

The machinery of this section was thus explained in Parliament: "The section deals with the position of Judges, Magistrates, of officials against whom criminal or civil proceedings may be initiated. We think it right, that there should be certain provisions, to some extent carrying on the existing provisions of the law, and to some extent supplementing them, to meet the new position, inserted in the Act.

"A first sub-section, it will be seen, provides that Bills which either abolish or restrict certain sections of the Code of Criminal and Civil Procedure shall not be introduced without the previous sanction of the Governor-General or of the Governor acting in his respective discretion. The section of the Code of Criminal Procedure says that no prosecutions against a Judge or Magistrate or official of a certain locality shall be initiated without the leave of the local Government. It also gives the Local Government powers to direct what court shall hear a prosecution as well as other matters with regard to procedure. That course is preserved in this sense. No Bill altering it can be introduced except with the sanction of the Governor-General or the Governor. A criminal prosecution is obviously a very serious thing for a Judge, or a magistrate in particular or indeed for any public servant, and we think that the existing safeguards, about which no complaint has been made should be preserved.

"Sub-S. (2) of the Clause provides that in exercising the power under that Clause, that is to say, in deciding whether or not a prosecution shall go forward, the Governor-General or Governor has the last word, or the final decision will be by the Governor-General or the Governor in his individual judgment. We do not anticipate that on those matters there will be a difference between him and his ministers, but it is thought right, the matter being of such great gravity to the civil servants themselves, and in particular to Indian members of the Civil Service, that, in the last resort, the Governor-General or the Governor, if he feels that it is a case where a prosecution should not go forward, shall be able to make that decision effective. The existing statutes with regard to civil procedure are somewhat detailed. The most important of them is one which says that, in the event of civil proceedings the official shall have two months' notice in writing before the actual legal machine starts to operate. That also we preserve in this section. But so far as civil proceedings are concerned, the really important thing to an official is whether, in all proper cases, his Government will stand behind him in respect of costs, and, in proper cases, of damages which he may have to pay.

"A servant of the Crown is in a different position from that of the servant, say, of a corporation or a company. If a servant of a big corporation or company, by an act of negligence, causes damage in the course of his duties, the person who suffers damages sues the master, the employer or the Corporation, because they will have the money with which to pay if he succeeds in his action; whereas, owing to the rule that the Crown, or the Governor representing the Crown, cannot be sued in the case of civil wrongs, the proceedings have to be taken against the employee, the servant, and not against the master. Therefore, it is right, that being so, that the Crown as master should stand behind the servant in all proper cases. We accordingly provide, in sub-S. (3) that so far as any costs or damages may be awarded against a public official, the question as to whether they should be defrayed out of the public purse, is a matter which, in the last resort, will rest with the Governor-General or the Governor. Here again we do not anticipate differences. We believe that Indian Ministers will

be as anxious to stand behind their officials, in all proper cases, as would the Governor-General or the Governor, but we provide that, in that last resort, the Governor-General or the Governor shall decide. There might be cases in which an official acting technically in the discharge of his duty was guilty, perhaps wilfully and it would be wrong for costs or damages to be defrayed out of the public purse. Such cases no doubt have occurred in the past and may occur in the future, but in ordinary cases, and particularly in the case of Indians, it is right that the employer should stand behind the servant". (*Par. Deb. Vol. 300, Col. 46, et seq.*)

Provisions as to
payment of certain
pensions and ex-
emption of those
pensions from
taxation in India.

272. Any pension payable to or in respect of a person who—

(a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or

(b) after the commencement of Part III of this Act—

(i) serves in India as an officer of His Majesty's forces; or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or

(iii) holds a reserved post,
shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by, or in accordance with arrangements made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature.

NOTES.

S. 272.—Explaining this section, Sir Samuel Hoare said:—"It makes it clear that the Secretary of State, acting as the agent of the Imperial Parliament, has the responsibility for seeing that the money is found from the Indian revenues to meet these pensions". . . "Certain of these pensions are paid by the High Commissioner and not direct by the Secretary of State. It is contemplated that the Secretary of State shall make arrangements for the payment of these pensions. The word "with" expresses the relations between the Secretary of State and the High Commissioner". (*Par. Deb., Vol. 300, Col. 885*).

"Pensions of this kind have always been paid free of Indian income-tax and this has been taken into account as one of the conditions of the service. For generations past this has been one of the accepted conditions of the Indian Civil Service". (*Par. Deb., Vol. 300, Col. 885, et seq.*).

Provisions as to family pension funds. 273. (1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of—

(a) the Indian Military Widows and Orphans Fund;

(b) the Superior Services (India) Family Pension Fund;

(c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations;

(d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules,

for the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order they think fit, for the

administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise.

Before recommending His Majesty to make any Order in Council under this sub-section, the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of these subscribers or beneficiaries.

(2) Any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section, be transferred to the Commissioners before the expiration of three years from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order:

Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years:

(3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order—

(a) so much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and

(b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

(4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.

(5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income tax in the United Kingdom, and estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland so provides in Northern Ireland, in respect of any pension payable under the regulations, or rules relating to any such fund.

(6) In this section—
references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed

as including references to any regulations or rules which may be substituted therefor;

the expression "existing subscribers and beneficiaries" means, in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, persons who have subscribed to, or are or have been in receipt of pensions from, those funds, and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the fund or, as the case may be, their interest under the regulations or rules; references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension payable otherwise than out of the moneys contributed and to be contributed under those regulations or rules;

references to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving or have served His Majesty in India, and accordingly the regulations and rules relating to any such fund may apply in relation to any such persons as aforesaid.

If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of persons serving His Majesty in Burma, the said regulations and rules may also extend to persons appointed to the service of the Crown in Burma after the Commencement of Part III of this Act.

NOTES.

S. 273.—This section has been enacted to allay the apprehensions felt by the contributors and pensioners of the four funds specified in the section, regarding the willingness or ability of the Indian Government to meet the obligations in their favour. The total sum involved in these four funds is about 12 million pounds.

The general rule is that there is to be a transfer of these funds to London, there to be under the control of the Commissioners to be appointed in manner provided by Order in Council and of the Secretary of State. An option is however reserved to individual pensioners or contributors to retain the funds in India.

As Mr. Butler, stated in Parliament: "It is our intention in discussing the family pension funds that the beneficiaries should have the last word. As is well known to the Committee, and was known to the Joint Select Committee, the beneficiaries have been given the choice of transferring their balances in the four pension funds to this country or of keeping them in India. The choice will be theirs." (*Parl. Deb.*, Vol. 300, Col. 907).

This option is under the Government of India (Family Pensions) Order 1936 exercisable until 1st April, 1937, unless the Secretary of States thinks it right to extend the time in any particular case.

The interest which the Government of India pays on these funds is 5 per cent. per annum, while if the funds are transferred to England and invested in Trustee Securities, they would fetch barely half that rate. That is why provision is made in sub-S. (4) for making of the *alteration* of the pension payable which is necessitated by the transfer.

The transfer has to be completed before April, 1939. (Sub-S. (2)). (*Vide* Government of India (Family Pensions Fund) Order, 1936).

274. Notwithstanding anything in this Act, the India Military Funds Act, 1866, the East India Annuity Funds Act, 1874, and the Bombay Civil Fund Act, 1882, shall continue to have effect but subject to the following adaptations, that is to say, that anything to be done under the said Acts by or to the Secretary of State in Council shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

NOTES.

S. 274—"This is a section which saves the Bombay Civil Fund Act, 1882, and the East India Annuity Funds Act, 1874, and it reproduces the provisions of S. 96 B (3) of the existing Act. Its effect is to save any rights possessed by members of the Civil Service under these two Acts which govern their pensions." (*Par. Deb.*, Vol. 300, Col. 1473).

275. A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

(a) by the Governor-General in the case of services and post in connection with the affairs of the Federation;

(b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province;

(c) by the Secretary of State in relation to appointments made by him:

Provided that any such agreement with respect to joint services and posts as is mentioned in chapter 11 of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor.

NOTES.

S. 275.—"This clause proposes that women shall be eligible for the various public services unless the higher authority, that is to say, the Secretary of State the Federal Government or one of the Provincial Governments, schedules particular services or branches of services or particular appointments as unsuitable for women.

A further question arose as to whether it would be possible, simultaneously with the removing of sex disqualification for the public services, to remove the sex disqualification for the professions. It will be seen that in the Sex Disqualification Removal Act, there is a provision affecting the professions in addition to the provisions affecting the services." (*Parl. Deb.*, Vol. 302, Cols. 517-518).

The main professions in India, such as the medical, legal and the teaching professions, are already open to women.

276. Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

NOTES.

Para. 15 (2) of the Government of India (Commencement, Etc.) Order 1936 provides:

"Until other provision is made under the new Act, the conditions of service applicable to any person or any class of persons appointed or to be appointed to serve His Majesty in a civil capacity in India shall be the same as were applicable to that person or, as the case may be, to persons of that class immediately before the commencement of Part III of the new Act."

277. (1) In this Part of this Act—

the expressions "all-India Service," "Central Service Class I," "Central Service Class II," "Railway Service Class I," "Railway Service Class II" and "Provincial Service" mean respectively the services which were immediately before the commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act; and

references to dismissal from His Majesty's service include references to removal from His Majesty's service.

(2) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India—

(a) include references to persons who, after service in India, Burma, or Aden, retired from the service of His Majesty before the commencement of Part III of this Act;

(b) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden.

(3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

PART XI.

THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.

278. (1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One-half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office,

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objections as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this subsection "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately before the commencement of Part III of this Act shall be dissolved.

(9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

NOTES.

Secretary of State and His Advisers.

S. 278.—Describing the history and position of the Secretary of State in Council prior to this Act the Joint Parliamentary Committee stated: "The Secretary of State in Council is by statute a body corporate, and the powers exercisable by the corporation thus brought into existence are singular and indeed in some respects anomalous, because inconsistent with the doctrine of ministerial responsibility. The Council itself consists of the Secretary of State and not less than eight nor more than twelve members, of whom at least one half must have served or resided in India for at least ten years. The members other than the Secretary of State hold office for a term of five years, but like His Majesty's Judges and the Comptroller and Auditor-General, may be removed from office on an Address presented to the Crown by both Houses of Parliament.

The Secretary of State in Council has power to dispose of real or personal estate vested in the Crown, to raise money by way of mortgage, and to make, vary and discharge contracts; and at the present time in any suit, whether in India or elsewhere, to which the Government of India or any Local Government or any official employed by them is a party, the proceedings must be in the name of the Secretary of State in Council. The Secretary of State in Council is also the only authority for raising loans in this country for the purpose of the Government of India. The Council of India, under the direction of the Secretary of State, is required to "conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India". At meetings of the Council, questions are decided by a majority vote, but the Secretary of State may, if he thinks fit, over-rule the Council, except in certain matters for the decision of which a majority of the

Council present and voting is required. These matters are: (1) grants or appropriations of any part of the revenues of India; (2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise; (3) the making of contracts, including instruments of contract of civil offices in India; (4) the application to the Government of India and the Local Governments of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads; (5) the passing of any order affecting the salaries of members of the Governor-General's Council; and (6) the making of rules regulating various matters connected with the Indian Public Services.

"The Bill which became the Act of 1858, under which the Crown and Parliament first assumed complete responsibility for the Government of India, originally provided that the decision of the Secretary of State should be final in all matters which had given rise to a difference of opinion in the Council of India; but the House of Commons insisted upon limiting the authority of the Secretary of State over the expenditure of Indian revenues, firstly, by requiring the concurrence of the Council of India to grants or appropriations of any part of those revenues, and secondly, by requiring the consent of both Houses of Parliament to defraying from Indian revenues of the cost of any military operation beyond the external frontiers of India. The purpose of those amendments appears to have been the anxiety of Parliament not to leave to a Minister, the unfettered disposal of the whole of the revenues of India and of the large patronage, which would thereby be placed in his hands, and to afford safeguards against the expenditure of Indian revenues on purposes other than those arising strictly out of the necessities of Indian government. The result has been that His Majesty's Government have never had, and have not now, the power to compel contributions from Indian revenues for imperial purposes, if a majority of the Council of India, refuse to sanction the proposal; and there is reason to believe that the powers of the Council in this respect have, on more than one occasion in the past, enabled a Secretary of State successfully to resist pressure from his colleagues in the Government to authorise expenditure from Indian revenues which appeared to him prejudicial to the interests of the Indian tax-payer. (J.P.C. Rep., paras. 382 to 384).

Under the changed conditions brought about by the Government of India Act, the White Paper, 1933, proposed the abolition of the Council. It was stated: "The Secretary of State in Council" as a Statutory corporation which alone can be plaintiff or defendant in any litigation instituted by, or against, any Governmental authority in India, and in whose name alone can be executed any contract or assurance entered into by any Government in India, is a conception which is manifestly incompatible alike with Provincial self-Government and with a responsible Federal Government; and the present power of veto possessed by the Council of India over all expenditure from the revenues of India is no less incompatible with the constitutional arrangement under this Act. (White Paper, Introduction, para 68).

This recommendation was endorsed by the Joint Parliamentary Committee in these words:—

"We cannot doubt that under a system of responsible government in India the Secretary of State in Council could not continue on the present basis. It will no longer be necessary, with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters; nor ought the authority of the Secretary of State to extend to estimates submitted to an Indian Legislature on the advice of Indian Ministers. But in our opinion it is still desirable that the Secretary of State should have a small body of Advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department. (J.P.C. Rep. para 385).

As a consequence of the disappearance of the Secretary of State as a statutory corporation, provision had to be made for constituting other authorities to hold property, to enter into contracts, and by and against whom suits could be filed. See S. 172 to 176 *ante*.

Sub-S. (3).—The term of office of members of the Council under the previous law was also 5 years but the tenure under S. 3 (7) was during good behaviour and removal could only be by His Majesty on an address by the Houses of Parliament. Further

the Secretary of State had the power to re-appoint members for a further term of 5 years. The tenure had now been altered into one of pleasure and the power of re-appointment has been abolished.

Sub-S. (4).—Explaining the need for the prohibition enacted in this sub-section it was stated in Parliament:—"There has always been the condition upon the Secretary of State's Council that members of it should not be members of either House. I think that is a salutary provision. I think that without it there might be division of responsibility. The only member of the Council responsible to Parliament is the Secretary of State. As soon as you have upon this Council members of one or other House, those members might go to one or other House and make speeches or give their votes contrary to the policy of the Secretary of State. That, from the constitutional point of view, would be an untenable position." (*Par. Deb.*, Vol. 300, Col. 100).

Sub-S. (5).—*See* Notes to S. 280.

Sub-S. (6).—"Under the existing position the Council of the Secretary of State has a statutory *locus standi* in questions involving charges on the revenues of India. That is quite an explicit duty. This Bill has in almost every respect changed that position. The provisions of the Bill dealing with the future in that respect are very different from the past. That statutory obligation upon the Council of the Secretary of State will, therefore, lapse, because the state of affairs to which it was to be applied has ceased to exist. There is no obligation upon the Secretary of State to consult his Council in finance other than finance in that limited respect. What he may do in future is for him to decide. Here it will be a specific type of finance, on which the Council had had a *locus standi* in the past. Under Clause 250 (S. 261) he has to obtain the concurrence of his advisers in service questions. Apart from that statutory obligation he is at liberty to decide on what subjects he consults." (*Par. Deb.* Vol. 300, Col. 1005).

Sub-S. (7).—This is intended to preserve the procedure of obtaining the opinion of members by circulation of papers which is the present practice.

279. (1) All stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England at the commencement of Part III of this Act shall, as from that date, be transferred to the credit of the Secretary of State, and any order or instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by the Secretary of State for the purpose either generally or specially, shall be a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith.

(2) Any directions authority or power of attorney given or executed by or on behalf of the Secretary of State in Council and in force at the commencement of Part III of this Act shall continue in force until countermanded or revoked by the Secretary of State.

NOTES.

S. 279.—*Cf.* S. 173 (2) as to the utilisation of these funds.

280. (1) As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.

(2) Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.

Existing accounts of Secretary of State in Council with Bank of England.

Organisation and expenses of India Office.

(3) There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from time to time be agreed between the Governor-General and the Treasury in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform,

NOTES.

India Office—Organisation and expenses: S. 280.—Sub-S. 5 of S. 278 and this section give effect to the recommendation of the Joint Parliamentary Committee in para. 389 of their report.—“We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India, but that an annual grant-in-aid of £150,000 is made by the Treasury. This is a matter which ought, we think, to be considered in connection with future changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service Estimates of the United Kingdom, but that Indian revenues should contribute a grant-in-aid, in view of the functions which the Secretary of State and his Department will continue to perform on behalf of the Government in India.”

The grant referred to is really only £110,000 a year and in the Financial memorandum which accompanied the Government of India Bill it was stated that after setting off the contributions that are to be received from the Revenues of India and Burma [under S. 280 (3) of the Government of India Act; and S. 141 of the Government of Burma Act] in respect of agency functions, it was not anticipated that the charge on the British Exchequer would differ materially from the previous figure of £110,000 per year.

The position was thus explained in Parliament.—“The financial arrangement is set out in the Financial Resolution, namely, that the India Office, to use a general expression, will become a Treasury Office. Its expenses will come from funds here and the Government of India will pay towards the cost of the India Office what may be termed agency expenses involved in any duty which the India Office has carried out either for the Federal Government or for the Provincial Governments. The proposal merely changes round the present plan. The present plan is that the expenses of India Office are paid out of the Indian Revenues but the Treasury make a contribution in the form of a grant-in-aid from British revenues. In future the Treasury will provide for the India Office, the Government of India making a contribution in respect of agency functions performed by the India Office for the Governments in India. In actual practice there will not be a great difference in the expenditure one way or the other.” (*Par. Deb. Vol. 300, Col. 1010*).

281. (1) All persons who immediately before the commencement of

Transfer of existing personnel.

Part III of this Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent Civil Servants of the State.

(2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834 to 1935, and of any orders, rules and regulations made thereunder shall apply in relation to a person so transferred as aforesaid as they apply in relation to a person entering the Civil Service with a certificate from the Civil Service Commissioners, and for the purposes of those Acts, orders, rules and regulations his service shall be reckoned as if service on the permanent establishment of, and employment by, the Secretary of State in Council had at all times been service or employment in a public department the expenses whereof were wholly defrayed out of moneys provided by Parliament:

Provided that neither the Superannuation Act, 1909, nor section 4 of the Superannuation Act, 1935, shall apply in relation to any person so transferred unless that Act, or, as the case may be, that section (as applicable to persons on the permanent establishment of the Secretary of State in Council) would have applied in relation to him if this Act had not been passed.

(3) His Majesty may by Order in Council direct that in their application to any person so transferred the said Acts, orders, rules and regulations shall have effect subject to any such modifications as may appear to His Majesty to be necessary for securing that the case of any such person shall not be dealt with in any manner less favourable to him than it would have been dealt with if this Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council.

(4) All persons who, not being on the permanent establishment of the Secretary of State in Council, were immediately before the commencement of Part III of this Act officers or servants employed in the United Kingdom by the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and, for the purposes of the Superannuation Acts, 1834 to 1935, and the orders, rules and regulations made thereunder, employment by the Secretary of State in Council shall be treated as if it had been employment by the Secretary of State.

(5) If the conditions of service of any person to whom the last preceding subsection applies included a condition as to eligibility for a retiring allowance in consideration of meritorious service, the Treasury may, if they think fit, grant to him such an allowance on his retirement.

(6) Notwithstanding anything in the Pension Commutation Acts, 1877 to 1882, it shall be lawful for the Treasury to commute for a capital sum so much of any superannuation, compensation or retiring allowance as is payable out of moneys provided by Parliament to a person so transferred as aforesaid and for the Secretary of State so to commute so much of any such allowance as is payable to such a person out of the revenues of the Federation.

Any such commutation shall be made upon such conditions as His Majesty in Council may direct, not being more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.

282. (1) So much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities which may become payable to or in respect of officers and servants transferred by the last preceding section to the department of the Secretary of State as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer shall be paid out of the revenues of the Federation:

Contributions from revenues of Federation.

Provided that account shall not be taken of any service before the date of transfer in respect of which such an allowance or gratuity payable out of moneys provided by Parliament might, if this Act had not been passed, have been awarded under the Superannuation Acts, 1834 to 1935.

(2) If any officer or servant so transferred to the department of the Secretary of State, or any person who, having been previously on the establishment of the Secretary of State in Council, was immediately before the commencement of Part III of this Act a member of the staff of

tha High Commissioner for India, or any person who immediately before the commencement of Part III of this Act was the Auditor of the Accounts of the Secretary of State in Council or a member of his staff, loses his employment by reason of the abolition of his office or post, or by reason of any reorganisation of the department or of his office, where such abolition or reorganisation results in the opinion of the Secretary of State from the operation of this Act or the Government of Burma Act, 1935, the Secretary of State shall award to that officer or servant out of the revenues of the Federation such compensation as he may think just and equitable in augmentation of any allowance or gratuity for which that officer or servant may be otherwise eligible.

(3) Any payments directed by this section to be made out of the revenues of the Federation shall be charged upon those revenues.

NOTES.

S. 282.—The need for the proviso to sub-S. (1) was thus stated by *The Solicitor-General*:—"It not frequently happens that a civil servant before going to the India Office has put in some service in another office and it would be wrong that that part of his pension which is attributable to his service in another department should be charged to the revenues of the Federation". (*Par. Deb. Vol. 300, Col. 1011*).

283. (1) The liability for payment of any superannuation allowances, compensation allowances, retiring allowances, additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to or in respect of persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as a member of that Auditor's staff, or partly in respect of service on the establishment of the Secretary of State in Council or as a member of that Auditor's staff and partly in respect of service as a member of the staff of the High Commissioner for India shall be a liability of the Government of the Federation, and those allowances and gratuities shall be charged upon the revenues of the Federation.

(2) The provisions of subsection (1) of this section shall also apply to so much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances, and gratuities awarded after the commencement of Part III of this Act to persons not transferred by the last but one preceding section as is attributable to such service before the commencement of Part III of this Act as is mentioned in the said subsection (1).

284. Any sums which, if this Act had not been passed, would have been payable, whether as of right or not, by the Secretary of State in Council out of the revenues of India to or in respect of a person who was a subscriber to the Regular Widows' Fund, the Elders Widows' Fund, or the India Office Provident Fund, shall be paid out of the revenues of the Federation and charged on those revenues.

NOTES.

S. 284.—Scope and object.—The provisions of this section and its implications were thus explained in Parliament:—"There are three old funds which have long since been closed to fresh entrants, but there are certain beneficiaries still drawing benefits in the shape of pensions. All these funds are non-votable and this section continues

their non-votability, and secures their payment from the revenues of India. The Regular widows' Fund was established in 1820 for the benefit of the widows and families of those people employed in the home service of the East India Company. The word "Regular" derived from the phrase "The Regular home establishment" of the old East India Company. This establishment included, broadly speaking, the Superior, or Officer, class who served the old East India Company, and there are a few beneficiaries of this fund still alive. The Elders' widows' Fund was established in the same year for the benefit of the wives and families of people employed in the home service of the East India Company who were regarded as members of what was known in those old days as the extra-department. The Elder, in the strict sense of the term was an overseer of labour in the warehouses of the East India Company. The persons who subscribed to the Elders' Widows' Fund included, however, extra clerks, attendants messengers and other subordinates. Therefore, between them these two funds comprise certain beneficiaries, not very many—in fact, they are few in number—who continue to draw benefit from these ancient funds which are, now closed to new entrants.

"Payments from these two funds were made out of capital investment which were held by the Secretary of State in Council, and under the original Act, 60 Vict., Ch. 2, the Secretary of State was charged with the payment of sums out of the revenues of India if these original capital sums were exhausted. Those original capital sums are not completely exhausted, but the contingency of their finally being exhausted must be provided for in this new Bill which we are in process of passing. The India Office Provident Fund, the third referred to in this new Clause was instituted in 1877 to provide pensions to the widows of members of the permanent staff of the Secretary of State who were not subscribers to either of the other two funds to which I have referred. This fund was closed in 1885. The money in the fund was handed over to the Secretary of State under an order of Court and the duty was laid upon him to guarantee the payment to the dependants of the original subscribers to this particular India Office Provident Fund.

"The liability is very small indeed, but in the unfortunate event of the funds not lasting out sufficiently to meet the money necessary for the last surviving beneficiary of these funds, we have made it certain that the money will be forthcoming from the revenues of India. The total number of beneficiaries under the first two funds is 30 between them, and under the last fund, while it is not absolutely certain, it cannot be more than approximately a dozen.

"The sums involved for all the dependants of these funds are only a few hundredes a year and certainly in total not over £1,000 a year." (*Par. Deb. Vol. 300, Col. 86*).

PART XII.

MISCELLANEOUS AND GENERAL.

The Crown and the Indian States.

285. Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

Saving for rights and obligations of the Crown in its relations with Indian States.

NOTES.

S. 285.—The Joint Parliamentary Committee state:—"The Crown possesses rights, authority and jurisdiction outside British India, including those rights which are comprehended under the name of Paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council; and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they cannot under the new Constitution be exercised on behalf of the Crown by any Federal authority, save in so far as they fall within the Federal sphere and only then when they affect a State which has acceded to the Federation. The White Paper proposes

that (subject to the exception which we have mentioned) they should in future be exercised by the Representative of the Crown, in his capacity as Viceroy; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy. Outside the Federal sphere, the States' relations will be exclusively with the Crown and the right to tender advice to the Crown in this regard will lie with His Majesty's Government. (*J.P.C. Rep. Para. 158*).

The need for this section was thus explained during the debates in Parliament:—“This is in order to make it quite plain that the provisions of the existing S. 132 of the Government of India Act are not to be regarded as in any way abrogated. That Section is the descendant of a corresponding Section which appeared in the original Act. When the powers and rights of the old East India Company were transferred to the Crown, it was necessary in the legislation to make it plain that treaties existing between the States and the East India Company were equally binding as between the States and the Crown. As the legislation of 1919 was a consolidating legislation, the same provisions naturally appeared as were contained in S. 132. Some States may have a little apprehension lest entry into the Federation might in some way prejudice their treaty rights and the treaty obligations of the Crown. In order to make it perfectly plain that no such prejudice is possible to occur to their treaty rights when this Bill becomes law, it is proposed to put in the section”. (*Par. Deb. Vol. 300, Col. 91 and 92*).

Sir Samuel Hoare explained the relationship between the Act and the exercise by the Crown of its powers of paramountcy thus:—“First, the Bill so far from worsening the Princes' position in regard to paramountcy will make it better. Secondly, the greater part of the Bill has nothing to do with paramountcy at all. Paramountcy is never so much as mentioned in the Bill. The greater part of the Bill has to be decided on other considerations and the introduction of paramountcy into the controversy should in no way complicate or delay our proceeding steadily and normally with the Bill in this Committee. Thirdly, Paramountcy must be dealt with in the normal way in India. It affects all the Princes, whether they federate or not, whether this Bill passes on the Statute Bill or not”. (*Par. Deb. Vol. 299, Col. 1237*).

Cf. S. 3 and Ss. 145 and 146.

286. (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

NOTES.

S. 286.—Explaining the origin of this section it was stated in Parliament:—“Its purpose is to make explicit that the representative of the Crown should be able to have at his disposal the necessary armed forces to carry out the discharge of his function for the protection of the State. Representations were made, by the Indian States, to the effect that they thought it would be better if some specific provisions were made in the Bill making it clear that the Representative of the Crown would have at his disposal the necessary forces to implement the Crown's obligation in relation to the States, and the Government felt that it would not be proper or technically right not to accede to that request.” (*Par. Deb. Vol. 300, Col. 1465*).

Though both the offices of ‘Governor-General’ and ‘Crown Representative’ are held by the same individual, (*Cf. S. 3 (3)*), their functions and source of authority

are different. It was in order to obviate confusion of functions that a neutral term like 'Viceroy' was avoided to describe the Governor-General. (*Cf.* notes to S. 3.)

The net additional expenditure is charged on the revenues of the Federation. (*Cf.* Notes to S. 145.)

287. Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connection with the affairs of the Province of powers and duties in connection with the exercise of the said functions of the Crown.

Arrangements for Governors and Provincial staff to assist in discharging functions of Political department.

NOTES.

S. 287.—The necessity for this section was thus explained in Parliament:—
"There are a number of small States in some Provinces with which the Provincial Governments have relations, and in order that those relations can be carried on efficiently it is necessary that the Governor-General should be enabled to delegate powers of the Governor to Provincial officers to carry on those arrangements. In the Province of Assam, for example, a Deputy Commissioner looks after small States, and it is in order that that sort of arrangement shall continue that this section has been moved as an addition to the Bill" (*Par. Deb.* Vol. 302, Col. 527).

Aden.

288. (1) On such date as His Majesty may by Order in Council appoint (in this section referred to as "the appointed day") the then existing Chief Commissioner's Province of Aden (in this section referred to as "Aden") shall cease to be a part of British India.

(2) At any time after the passing of this Act it shall be lawful for His Majesty in Council to make such provision as he deems proper for the government of Aden after the appointed day, and any such Order in Council may delegate to any person or persons within Aden power to make laws for the peace, order and good government of Aden, without prejudice to the power of His Majesty in Council, notwithstanding such delegation, from time to time to make laws for any of the purposes aforesaid.

(3) An Order made by His Majesty in Council by virtue of the preceding sub-section may, without prejudice to the generality of the words of that sub-section, contain provisions with respect to—

(a) the continuing validity of all Acts, orders, ordinances and regulations in force in Aden immediately before the appointed day;

(b) the continuing validity of lawful acts done by any authority in Aden before the appointed day;

(c) the validity and continuance of proceedings commenced before the appointed day in any Court of Justice in, or having jurisdiction in, Aden; and

(d) the enforcement by or against the Government of Aden of claims which, if this Act had not been passed, might have been enforced by or against the Secretary of State in Council in connection with the administration of Aden.

(4) If any such Order is made, it shall confer appellate jurisdiction from courts in Aden upon such court in India as may be specified in the Order, and it shall be the duty of any court in India upon which jurisdiction is so conferred to exercise that jurisdiction, and such contribution,

if any, as His Majesty in Council may determine, shall be paid out of the revenues of Aden towards the expenses of that Court.

The Order shall also make provision specifying the cases in which an appeal from that Court in India may be brought to His Majesty in Council.

(5) Any property which immediately before the separation of Aden from India was vested in His Majesty for the purposes of the Government of India and either was then situate in Aden, or, by virtue of any delegation from the Secretary of State in Council or otherwise, was then in the possession, or under the control of, or held on account of, the Local Government of Aden, shall, as from the said separation, vest in His Majesty for the purposes of the Government of Aden, and any contract made or liability incurred by or on behalf of the Secretary of State in Council before the said separation solely for a purpose which will after the separation be a purpose of the Government of Aden shall, as from the separation, have effect as if it had been made or incurred by or on behalf of the Government of Aden.

NOTES.

S. 288 —For the history of Aden as part of British India see Notes to S. 94 (2), *supra*.

Sub-S. (4).—This carries out the undertaking given by His Majesty's Government to retain the appeals to the High Court of Bombay from the Courts of Aden. Appeals from decisions of the High Court in exercise of the appellate jurisdiction conferred by Order in Council do not lie to the Federal Court. S. 218

New Provinces and alterations of boundaries of Provinces.

Creation of new Provinces of Sind and Orissa. **289.** (1) As from such date as His Majesty may by Order in Council appoint—

(a) Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind;

(b) Orissa and such other areas in the Province of Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be specified in the said Order shall be separated from the Presidency of Madras and the Central Provinces respectively, and Orissa and the other areas so separated shall together form a Governor's Province to be known as the Province of Orissa; and

(c) the Province formerly known as Bihar and Orissa shall be known as the Province of Bihar.

(2) An Order in Council made under this section shall define the boundaries of the Provinces of Sind and Orissa and may contain—

(a) such provisions for their government and administration during the period before Part III of this Act comes into operation;

(b) such provisions for varying, during the said period, the composition of the Local Legislature of any Presidency or Province the boundaries of which are altered under this section.

(c) such provisions with respect to the laws which, subject to amendment or repeal by the Provincial or, as the case may be, the Federal Legislature, are to be in force in, or in any part of, Sind or Orissa respectively;

(d) in the case of Orissa, such provisions with respect to the jurisdiction therein of any Court theretofore exercising the jurisdiction of a High Court, either generally or for any particular purpose, in any area to be included in the Province;

(e) such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities; and

(f) such supplemental, incidental and consequential provisions, as His Majesty may deem necessary or proper.

(3) Subject to the provisions of any such Order as aforesaid, the Governor-General in Council may, until the date on which Part III of this Act comes into operation, exercise in relation to the Provinces of Sind and Orissa and any Presidency or Province the boundaries of which are altered under this section any powers which he might have exercised if the said new Provinces had been constituted, or those boundaries had been altered, under the provisions in that behalf contained in the Government of India Act.

(4) In this Act the expression "the Legislative Council of the Province", when used in relation to a date before the commencement of Part III of this Act shall in the case of Sind and Orissa be deemed to refer to the Legislative Councils of Bombay and of Bihar or Bihar and Orissa respectively.

NOTES.

S. 289.—By the Government of India (Constitution of Sind) Order, 1936 and the corresponding Orissa Order, Sind and Orissa have been formed into separate Provinces from 1st April, 1936; and the respective Orders in Council enact transitory provisions to be in force till the commencement of Part III (i.e., 1st April, 1937). For the subvention to the Province, see notes to S. 142.

Creation of new Provinces and alterations of boundaries of Provinces.

290. (1) Subject to the provisions of this section, His Majesty may by Order in Council—

- (a) create a new Province;
- (b) increase the area of any Province;
- (c) diminish the area of any Province;
- (d) alter the boundaries of any Province:

Provided that, before the draft of any such Order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) An Order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper:

Provided that no such Order shall vary the total membership of either Chamber of the Federal Legislature.

(3) In this section the expression "Province" means either a Governor's Province or a Chief Commissioner's Province.

NOTES.

S. 290.—*Cf.* S. 52 A. of the Government of India Act, 1919. It was in exercise of the power conferred by that section that Burma was constituted into a Governor's Province in 1921. The power formerly vested in the Governor-General in Council to act with the previous sanction of the Secretary of State, has now been vested in His Majesty as the continuance of the power in the Governor-General is incompatible with the status of Provinces as, Units in the Federation.

Franchise.

Power of His Majesty to make provision with respect to franchises and elections—

291. In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them, that is to say—

(a) the delimitation of territorial constituencies for the purpose of elections under this Act;

(b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls;

(c) the qualifications for being elected at such elections as a member of a legislative body;

(d) the filling of casual vacancies in any such body;

(e) the conduct of elections under this Act and the methods of voting thereat;

(f) the expenses of candidates at such elections;

(g) corrupt practices and other offences at or in connection with such elections;

(h) the decision of doubts and disputes arising out of, or in connection with, such elections;

(i) matters ancillary to any such matter as aforesaid.

NOTES.

S. 291.—Schedules I and V which relate to the composition of the Federal and Provincial Legislatures respectively and Sch. VI which relates to the Franchise for Provincial Legislatures expressly leave certain matters to be "prescribed". This section provides the machinery for "prescribing" such matters.

It further clothes His Majesty in Council with power to fill in the details of the machinery for elections under the new Act.

The Orders in Council passed up to now under this section are—

(1) The Government of India (Provincial Legislative Assemblies) Order, 1936, delimiting the territorial constituencies.

(2) The Government of India (Provincial Legislative Council's Order), 1936.

(3) The Government of India (Provincial Election corrupt Practices and Election Petitions) Order, 1936.

Provisions as to certain legal matters.

292. Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.

Existing law of India to continue in force.

NOTES.

S. 292.—In theory all Colonial Legislatures are subordinate law-making bodies and legislation under the powers conferred on them are comparable with the articles and bye-laws of Corporations and statutory bodies, which is the ratio for the application of the doctrine of *ultra vires* to their legislative enactments. The rule of construction applicable to bye-laws is that when a statute is repealed it must be considered as if it had never existed, and that all by-laws and rules made under a repealed statute cease to operate with the repeal of the main enactment unless there is any saving provision in the repealing enactment.

As was observed by Lord Reading C. J. in *Watson v. Minch* (1916) 1 K.B. 688 at 690,—“Does the repeal of an Act which enables a corporation to make by-laws have

the effect of repealing by-laws already made under the power while it existed, or whether the bye-laws remain in force notwithstanding the repeal of the statute under which they were made?" Citing the passage from *Suttees v. Ellison*, [9 B. & C. 750 (752)], "It has long been established that when an Act of Parliament is repealed it must be considered (except as to transactions passed and closed) as if it had never existed." His Lordship proceeded, "To that passage it is only necessary to make one qualification in that since that case Lord Brougham's Act, and the Interpretation Act, 1889 have been passed. It would follow that any bye-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provision preserving the validity of the bye-law notwithstanding the repeal."

In the words of Sankey, J., "When a statute is repealed any by-law made thereunder ceases to be operative unless there is a saving clause in the new statute preserving the old by-law". Hence the necessity for this saving clause.

The section merely continues the existing law. It does not validate any law and such invalidity as existed is still open to attack. Cf. notes to S. 176.

293. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces:

Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, bye-law, rule or regulation having in British India the force of law.

NOTES.

S. 293.—The amendments made by the Adaptation Order cannot be challenged as *ultra vires*, as they derive their authority from Parliament but the Acts as amended or adapted, may be altered by the legislature which under Part V is competent to legislate in regard to the subject matter of the Law. The 'competent legislature or competent authority' is not determined by the Orders in Council, but must be sought on the proper interpretation of Part V, read with Sch. VII of the Act.

294. (1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this sub-section should apply, and references in this Act to a Federated State shall not be construed as including references to any such area:

Provided that—

(a) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration;

(b) if His Majesty with the assent of the ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted:

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order:

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British court in a foreign country" shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

NOTES.

S. 294: Powers under the Foreign Jurisdiction Act.—"The purpose of S. 294 is to define the extent to which powers hitherto exercised in the States by the Crown in virtue of the Foreign Jurisdiction Act or otherwise are to be affected by the provisions of this Act: in other words, to define the extent to which those powers in Federated States are to continue or to be replaced by powers exercised by or on behalf of the Federation. It goes without saying that, in the case of the non-Federated States all these powers usually spoken of as "paramountcy powers", will continue unaffected." (*Parl. Deb., (H.L.), Vol. 98, Col. 604*).

The Solicitor-General said:—"This section deals with the rather technical matter of the exercise by the Crown of its powers under the Foreign Jurisdiction Act in parts adjacent to British India but which are not British territory. I will give one example. In the case of certain of the railways which run through Indian States the Rulers of those States have ceded jurisdiction to the Government of India in respect of certain matters connected with the railways and, in some cases at any rate, in respect of a certain area on each side of the line. The territory does not become British territory, but there is the power to make laws and regulations which run on the railway, though it is in an Indian State. (*Cf. Muhamud Yusufuddin v. Emperor*, 24 I.A. 137). That power is exercised under the Foreign Jurisdiction Act. In so far as the area at present covered by this procedure comes within the Federal part the powers of the Federal Legislature will supersede the powers at present exercised under the Foreign Jurisdiction Act. Then there comes the question of the powers now exercised under the Foreign Jurisdiction Act, which will not be merged in the Federal power either because they are altogether outside it or because they are in relation to a State which is not Federated." (*Parl. Deb., Vol. 300, Col. 1029*).

"**Sub-S. (1)** is intended to deal with cases in which full jurisdiction has been exercised by the Crown in self-contained areas within a State, for example, such areas as Quetta, the Civil and Military Station of Bangalore, and Cantonments such as Secunderabad and Mhow. It is clear that the jurisdiction hitherto exercised in respect of such areas must continue. In other words such areas must be regarded as excluded from the State for the purpose of Federal powers. The sub-section accordingly gives the Crown power to notify any State, that, on Federation, any such area contained in the State will be treated as falling within the terms of this sub-section. It further provides that in the event of the Crown's deciding to relinquish jurisdiction over such an area, the powers relinquished are to be replaced through a supplementary Instrument of Accession by Federal powers.

"**Sub-S. (2)** provides that any jurisdiction exercised in a state, whether territorially for example, in respect of railway lands—or more generally, is to cease to be exercisable in so far as "corresponding and co-extensive" powers are assumed in the State by Federal authorities.

“Sub-S (3) provides for the continuance in a State for a period of five years of any British Indian Legislation in force in the State at the date of accession in virtue of foreign jurisdiction, even in respect of matters which become Federal matters in the State on its accession. This is clearly necessary in order to provide a period of grace for the Federal Legislature to replace such legislation by its own. Obviously great inconvenience would result if the consequence of accession was the immediate cessation of all British Indian Law in force, for instance, throughout the railway lands.

Sub-S. (4) —Continues in force all powers and jurisdiction hitherto exercisable in the States, save to the extent to which they are affected by the previous subsections.” (*Parl. Deb., (H.L.), Vol. 98, Cols 604-605*).

The latter part of the sub-section is designed “to regularise the position of political officers under the Foreign Jurisdiction Act.” “The powers will be delegated to the proper representatives of the Crown in all proper cases, and there is no intention that the power should be exercised by anyone save by the Crown’s representative in India in relation to the Indian States, who will be the Governor-General”. (*Parl. Deb., Vol. 300, Col. 1030*).

The reference is to the Foreign Jurisdiction Order in Council, 1902.

Sub-S. (5) — This sub-section “deals with a power which at present is exercised to prevent the trial by State Courts of British subjects for offences committed in the States. The right is claimed and exercised under paramountcy at the present time but there is an inherent right of the Crown to insist on British subjects being tried in British Courts for offences committed outside British India if it is thought desirable for any reason. It was thought desirable to make that position plain by positive enactment”. (*Parl. Deb., Vol. 302, Col. 1037*).

Sub-S. (6) —Speaking of the second portion of this sub-section, the *Marquess of Zetland* said.—“The words are designed to enable the Federal Court to hear appeals from decisions of such British Courts as are to continue to exercise Foreign jurisdiction in the Federated States”. (*Parl. Deb., H.L., Vol. 98, Col. 605*).

295. (1) Where any person has been sentenced to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province:

Provided that nothing in this subsection affects any power of any officer of His Majesty’s forces to suspend, remit or commute a sentence passed by a court martial.

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

NOTES.

S. 295: Power of Pardon.—This section deals in general with the power of pardon. Under S. 401, Criminal Procedure Code, the authorities heretofore vested with such powers were the Local Governments and the Governor-General in Council and they had concurrent powers in all cases. Besides this statutory power, S. 401, saved the right of His Majesty to exercise the prerogative of pardon and to delegate that power to the Governor-General in Council.

It was thought to be inconsistent with Provincial autonomy to vest a power in the Federal executive at the centre to interfere with convictions of Courts over whom the control, vested in the Provincial Government and Legislature, was complete. An exception has, however, been made in the case of sentences of death, and the Governor-General in his discretion has been authorised to exercise the powers

formerly vested in the Governor-General in Council under S. 401 in respect of such sentences. Subject to this exception, the powers of the Governor-General in Council under S. 401 are taken away.

To give effect to these changes Ss. 401 and 402 of the Criminal Procedure Code have been amended by the omission of the reference to the Governor-General in Council in sub-S. (1), (2), (3) and (6) of S. 401 and in S. 402 and by the addition of a new section which runs as follows:—

S. 402-A: Criminal Procedure Code.—"The powers conferred by Ss. 401 and 402 upon the Provincial Government may, in the case of sentences of death, also be exercised by the Governor-General in his discretion". The Central or Federal Government, therefore, has no longer any power to interfere with convictions by Provincial Courts. See *Adaptation of Laws Order in Council, 1937*.

The powers exercisable by the Local Government under S. 401, continue to be vested in them and are within the ministerial field, in which the Governor would be bound to accept the advice of the Ministers unless possibly in exceptional cases where on the ground of his Special Responsibility for peace and tranquillity he chooses to disregard that advice.

Prerogative Power.—His Majesty is empowered by sub-S. (2) to delegate to the Governor-General power to grant pardons and reprieves. (Cf. S. 401 (5), Criminal Procedure Code). By Clause (2) of the Letters Patent constituting the Office of Governor-General, His Majesty has been pleased to delegate to the Governor-General "to grant to any offender convicted in the exercise of its Criminal jurisdiction by any Court of Justice within Our territories in India a pardon, either free or subject to such lawful conditions as to him may seem fit."

The usual form of delegation to Colonial Governors of the prerogative of pardon is by including it in the Instrument of Instructions and it is made a condition for its exercise that it must be exercised on the advice of the Ministry. The Instructions however singled out the case of death sentences and in their case the Governor was required to place the matter before the Executive Council and 'after taking the Council's advice, act on his deliberate judgment,' with an obligation to enter a note of his reasons if he differed from his Council. (See for a detailed history of the prerogative in the Colonies, Keith *Responsible Government in the Dominions*. Vol. II, Part VI, Ch. IV.). In the Federal system of Canada and Australia, Provincial Autonomy is recognised by the delegation to the Governor-General under the Instruments of Instructions of the power of pardon only in respect of convictions, etc., in respect of offences against Dominions and Commonwealth Laws. (See *Keith, op. cit.*, p. 1117).

But it should be noted that in the distribution of legislative power effected under this Act "Criminal Law" is in general a concurrent subject.

The Instrument of Instructions to Colonial Governors contains a delegation of the power to remit any "fines, penalties or forfeitures which may become due and payable to Us." Cf. Cl. IX, Instructions to the Governor-General of the Union of South Africa. In the absence of such delegation, it is presumed that there is no power in the Governor-General to remit penalties. The point assumes some importance by reason of the provisions in Ss. 27 and 70 which provide penalties on persons taking part in the proceedings of the Federal and Provincial Legislatures without being entitled to do so. It is submitted that apart from the power to remit penalties not being included in the delegation, the penalty referred to above cannot be remitted at all, as not included in the power of the Crown itself. The object of the sections is the creation of a debt to the Federation or Province and the proceedings for the recovery of the same, is process for the recovery of money due and the sums mentioned in Ss. 27 and 70 are not penalties imposed on offenders in proceedings of a Criminal nature. Cf. *Todd v. Robinson*, 12 Q.B.D. 530.

The powers of the Indian Legislatures to affect the prerogative of mercy may now be considered. In *Canada* it has been held that the exercise of the prerogative could be barred by local enactment, (Cf. *A. G. for Canada v. A.G. for Ontario*, 23 Sup. C.R. 458, a decision of the Supreme Court commonly known as the *Pardoning Power Case*)

though it is a matter of doubt how far this is reconcilable with the judgment of Lord Cave in *Nadan v. King*, 1926, A.C. 482.

It would however seem that the Indian Legislature would not have power to affect the prerogative. Sub-S. (2) of this section itself seems to assume that the prerogative in question is not comprehended within the Act; if so, it could not be included within the grant of the powers to the Indian Legislature under Part V and Schedule VII. Again the prohibition in sub-S. (1) seems to be restricted to authorities "in India outside a Province" thus implying that authorities outside India would have the right to interfere. Finally, such legislation would fall within the vice of extra-territoriality, and come directly with in the reasoning of *Nadan v. King*, 1926, A.C. 482.

296. (1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

Courts of Appeal in revenue matters.

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit, to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature.

(3) There shall be paid to the members of any tribunal constituted under the last preceding subsection, such salaries and allowances as the Governor exercising his individual judgment may determine, and those salaries and allowances shall be charged on the revenues of the Province.

NOTES.

S. 296.—Explaining this section, the *Solicitor-General* said—"The Clause sets up procedure by which the Governor can establish a tribunal to deal with the revenue matters in some of the Provinces in India. There are at the moment tribunals quite independent of the Executive which deal with the revenue matters, but in some Provinces that is not the case. When the Government becomes responsible to a Legislature it will be obviously undesirable that the Government should decide revenue cases in which itself is involved, and the intention of the Clause is that a tribunal should be set up by the legislature. The Clause provides, however, that the Governor may in the interim constitute such a tribunal himself." . . . "This is a matter on which we think that it is desirable the Governor should act with his Ministers and should consult them, and that they should, if possible agree as to who are to be the members of the tribunals." (*Parl. Deb.*, Vol. 300, Cols. 1035-1036).

Prohibition of certain restrictions on internal trade.

297. (1) No Provincial Legislature or Government shall—

(a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description;

(b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

NOTES.

S. 297: Freedom of Inter-Provincial Trade.—The purpose and scope of the provisions of this section were thus explained in Parliament: "It would indeed be a serious situation if we were to allow to develop within India in future serious restrictions on trade and so upset many of the arrangements that have been made in other directions. This is a subject which has demanded considerable care and attention on the part of the Government, and the Government have finally drafted this Clause for the purpose of achieving as far as possible, free trade within India. The object of paragraph (a) is to stop a Provincial Legislature, by its power to legislate on items in the Provincial Legislative list, from checking the distribution of trade in India. Therefore the clause draws particular attention to the items in the Provincial Legislative list which might empower the Province so to legislate as to check the free circulation of trade. These items are in particular No. 26 (now 27)—Trade and commerce within the Province; markets and fairs; and so forth. I take these two as typical examples of the attempt which the proposed clause makes to prevent a Provincial legislature legislating in such a way as to stop the free circulation of trade.

"It leaves it possible still for the Provinces to take measures, for instance, under items 30 and 40 of the Provincial legislative list to deal with such a question as duties of Excise on liquor. Item 40 of the Provincial legislative list gives powers to impose duties of Excise. These duties of Excise are vital to the welfare of the Provinces. I believe that in the Province of Madras from three to four crores of revenue accrue by this power of putting duties of Excise on liquor and so forth; and in a Province like the United Provinces two crores accrue to the Provincial revenues from this source. It is not thought that by allowing this power to the Provinces it will lead to any contravention of the principle of free trade. In the same way, we must allow the Provincial Governments to legislate on such questions as health, the movement of diseased cattle and so forth, and if our Clause were drawn in a different way with reference to the items on the legislative list this would be impossible. It is to achieve the object of free trade, and not unduly to restrict the Provinces with regard to Excise or health questions that we have drawn our clause in this manner." (*Parl. Deb.*, Vol. 300, Col. 1406).

This section has a three fold purpose—(1) to provide that notwithstanding Provincial Autonomy, British India shall be one economic unit, with no internal trade barriers. For this purpose the powers of the Provincial Legislatures and Governments are restricted not merely *vis-à-vis* the other units of the Federation, but as against all the world; and the legislation of a Province imposing restrictions on the entry from an unfederated State or even from a foreign country is prevented by this section. In this connection the provisions of the British North America Act and the Commonwealth of Australia Act, may be contrasted. S. 121 of the British North America Act enacts: "All articles of the growth, produce or manufacture of any one Province shall from and after the union be admitted free into each of the other Provinces", a restriction which is confined to the products of the units constituting the Federation and is designed to prevent interprovincial tariffs. S. 92 of the Australia Act is similarly confined to 'interprovincial' trade. It provides: On the imposition of uniform customs duties "trade and commerce and intercourse among the States, whether by means of internal carriage or ocean navigation shall be absolutely free".

The general object of the section is as stated above the promotion of free-trade in British India by the removal of certain restrictions on internal trade. It will be noticed that the disability imposed by the section does not extend to the Indian States which are the other units in the Federation. In their case internal transit duties are being permitted to exist where they do, but it is expected that care would be taken to see that there is no further extension of such restrictions.

There is no legal prohibition against discrimination between the Provinces or units by the Federal Government or Federal Legislature. Provisions as in the Australian Commonwealth Act, S. 51 (ii) "Taxation—but so as not to discriminate between States or parts of States." S. 51 (iii) 'uniform bounties' and S. 99, "The Commonwealth shall not give any preference to one State or part thereof over another State or part thereof" do not find a place in this Act.

(2) To render Foreign goods—whether from the United Kingdom or elsewhere which have once entered the Federal area, free from Provincial restraints. By virtue of its power under item 19 of List I the Federal Legislature and Federal Government might prohibit or restrict the ingress or egress of goods across the customs frontiers of India. In the absence of such a prohibition or restriction, or subject to such restrictions as the case may be the Provincial Governments are not to prevent goods reaching those frontiers, or goods from those frontiers reaching the ultimate consumer.

(3) To close up a possible gap in the Chapter on discrimination. As was stated in Parliament "Paragraph (b) of the new Clause attempts to meet a wish which has been put to us, especially by the European Association and others interested in this matter. The object of it is to avoid the situation which might arise supposing that some commodity had come in through the Customs and had been dealt with there, and it was then proceeded to be dealt with in the Province to the detriment of the original object which had been achieved by the operation of the Customs. For instance, there might be discrimination as between British and Belgian steel entering a particular Province, and this Paragraph has been inserted to prevent any particular Province destroying the original value of the general Customs policy of the Federation as a whole." (*Parl. Deb., Vol. 300, Cols. 1405-06*).

Speaking of Clause (b) Mr. Hammersley said: "I am glad to support this Amendment and to pay a tribute to the Government and to thank them for closing a loophole which, if it had been left open, might have been harmful to British trade in India. The Governor-General in the Bill is given the responsibility of preventing penal discrimination, but that responsibility is not carried forward to the powers and special responsibilities of the Provincial Government. Therefore, it became obvious that it might be possible for some Provincial taxation to be imposed on goods passing through the Provinces and thereby some measure of discrimination be brought to bear on goods by reason of their origin. The Government realising that situation, put down a new clause which as the Secretary of State has explained, prohibits a Provincial Government from making certain restrictions. But as it stands in the Bill at the moment it prohibits them only in respect of taxes. The Amendment extends the prohibition from taxes to cesses and tolls and therefore makes more certain that British or Burmese trade should not be subjected to penal discrimination". And Mr. Fleming further supporting the clause said: "I wish to take this opportunity of adding my tribute to my right hon. Friend for this Amendment. I have not the slightest doubt that it will go a long way towards removing any doubts which exist among the people of Lancashire more especially those engaged in the cotton trade with India, about this matter". (*Parl. Deb., Vol. 302, Cols. 1038-1039*).

Commerce and the Police Power.—In America the doctrine has been propounded that where the goods are deleterious, or are damaged, diseased, or adulterated, they are outside the range of "Commerce" and that the prohibition against State restriction and regulation does not apply to them. The principle is thus explained by Story:—"The acknowledged power of the States over certain subjects having a connection with commerce are entirely different in their nature from that to regulate commerce, but they are by no means identical. Among these are inspection laws, health laws, laws regulating turnpikes and ferries all of which when exercised by a State are legitimate arising from the general power belonging to it. They are not so much regulations of Commerce as of Police." (Story—*The Constitution of United States*).

This doctrine has been rejected in Australia, but it is submitted that the principle of that rule would be applicable on the construction of Cl. (a) of this section by reason of the restriction being confined to the entries relating to trade and commerce etc. If a prohibition or restriction could be justified as falling under the heads of "Health and Sanitation," or "of Adulteration of foodstuffs" the legislation would be *intra vires*.

Commerce Power in Canada and Australia.—It is apprehended that like its compeer in the Australian Constitution (S. 92) this section is likely to contribute to more litigation than any other section of the Act.

The provisions in the Australian and Canadian Constitutions regarding the regulation of trade and commerce may be briefly referred to. S. 51 (1) of the Austra-

lian Act vests in the Commonwealth Parliament legislative power in regard to "Trade and Commerce with other countries and among the States" that the regulation of inter-provincial trade is a Federal Power. As however the States have a residuary power, the power to regulate trade and commerce within the State continues in the States. (S. 107). But both the States as well as the Commonwealth are however bound so to exercise their power of regulation as not to transgress the fundamental guarantee of the constitution embodied in S. 92 that "trade and commerce among the States whether by means of internal carriage or ocean navigation shall be absolutely free". (The Dried Fruit Cases: *James v. Cowan*, 1932 A.C. 542 as regards State legislation and *James v. Commonwealth of Australia*, 1936 A.C. 578, regarding the Commonwealth.) (Cf., Art. 1, S. 8 (3) of the American Constitution under which the Congress has the exclusive power to "regulate commerce with foreign nations and among the several States").

S. 91 (2) of the British North America Act vests exclusively in the Dominion Parliament power to make laws regarding "the regulation of trade and commerce". Though the above words are wide the Privy Council has held that "the literal meaning of the words should be restricted to afford scope for powers which are given exclusively to the Provincial Legislatures". (*Bank of Toronto v. Lambe*, 12 A.C. 575 (581). In the words of the Judicial Committee in *Citizens' Insurance Co. v. Parsons*, 7 A.C. 96 (113), S. 91 (2) includes "political arrangements in regard to trade, requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern and may perhaps include general regulations of trade affecting the whole Dominion, but it does not comprehend the power to regulate by legislation the contracts of a particular business or trade in a single province."

It will thus be seen that scheme of the enumeration of the "commerce power" under this Act is the reverse of that in the Dominions above-mentioned. "Trade and Commerce within a Province" is enumerated and vested exclusively in the Province, while "Inter-provincial Trade" is not enumerated at all. So that the power to regulate inter-provincial trade in so far it could be validly regulated must be obtained by piecing together powers under several enumerated heads which are assigned to the exclusively to the Federal or Concurrent lists. (See for instance, Posts, Railways, Shipping, Navigation, Carriage of Goods and Passenger by Sea or Air, Cheques, Bills of Exchange, etc., regulation of labour in mines, Banking, Trading Corporations, Standard of weight in the Federal Lists and Criminal Law, Contracts, Arbitration, Mechanically propelled Vehicles, Welfare and Conditions of Labour, etc.,—in the Concurrent List). If there is any gap in the power to regulate inter-provincial trade, it must be taken that the gap is deliberate, and if inconvenience should be felt from the absence of power, recourse should be had to the powers of the Governor-General under S. 104 to allocate that power to the appropriate Legislative organ.

"Trade".—Trade and Commerce are not interchangeable expressions. Trade is narrower than commerce; and has the technical meaning of "buying and selling". See per Willes, J., in *Harris v. Amery*, L.R. 1 C.P. 148 and per Lord Halsbury, L.C., in *San Paulo Railway v. Carter*, 1896 A.C. 38. It has also a larger meaning as to include manufactures, (*Commissioners of Taxation v. Kirk*, 1900 A.C. 588). It would seem that it is not essential to a trade that the persons carrying it on should make or desire to make a profit. (Per Coleridge, C.J., in re *Law Reporting Council*, 22 Q.B.D. 279). *Quære*, whether it should be "trade" within the "trade and commerce power".

"Commerce".—The fundamental and primary sense of the word "commerce" is traffic but it is something more. "The particular instances that may fall within the ambit of the expression depend upon the varying phases and developments of trade and commerce itself. It has never been confined to the mere act of transportation of merchandise. That the word includes that act is a truism. All the commercial arrangements of which transportation is the direct and necessary result form part of "trade and commerce". The mutual communings, the negotiations verbal or by correspondence, the bargain, the transportation and the delivery are all parts of that class of relations between mankind which the world calls "trade and commerce". *MacArthur v. Queensland*, 28 Com.L.R. 530 (547).

State Control of Trade and Commerce.—The necessity for economic planning and social control of production and distribution of articles of commerce became

imperative when capitalism, with its doctrine of *Laissez Faire*, and profit motive was faced with a crisis in 1929. Excessive concentration of wealth threatened to overwhelm if not to destroy the capitalist structure itself, for while production went up by leaps and bounds, the buying power of the masses which alone could absorb the product was reduced by an appalling debt load and the sharp fall in the price of primary products which resulted, reacted in the same direction and came very near to the destruction of capitalism itself. Governments therefore stepped in to avert the catastrophe and this brought in problems for the lawyers and the Courts especially where either by reason of the Federal Structure of the Constitution, there was a conflict between the jurisdiction of the Federal Centre and the Units, or by reason of fundamental guarantee in the Constitution for the free play of economic forces, Federation and the units were faced with lack of power to deal with the situation.

The legislation designed to ease the economic situation has taken the form of the control of the production and marketing of goods.

The American cases which have considered the validity of President Roosevelt's New Deal, do not furnish us with any analogy because the distribution of power between the Centre and the Units in regard to allied subjects is so very different from that adopted in this Act. The Australian cases on the other hand, do furnish some analogy, though as already stated, the lack of any general power in the Federation to regulate inter-provincial trade cuts down even the small extent of power that has been held to vest in the Commonwealth Parliament.

S. 92 of the Commonwealth of Australia Act guarantees to the citizens of the Commonwealth absolute freedom of interprovincial trade, while the power of the State to regulate trade and Commerce within the State is left untouched. But it would at once be seen that intra-State and inter-State trade might be so blended that the regulation of the one is impossible without the regulation of the other; and the line between the two cannot be easily drawn.

Marketing Legislation.—Co-operative marketing has been one of the main forms of social control that has been adopted for the regulation of trade. When enforced compulsorily on a minority of traders or producers it is certainly an interference with freedom of trade, though it may be designed to stabilise and preserve an industry taking a long term view. "May a State socialise an industry to the extent of controlling those engaged in it by requisitioning their products or by compensating them in a way thought just and proper or is the "freedom of trade" which is guaranteed intended to prevent or be understood as preventing the nationalisation of the means of distribution and exchange?"

Provincial Power—The validity of Provincial Legislation on these topics may now be considered.

Such legislation may take one of two forms.

(1) The type of legislation exemplified by the "Wheat case" (*New South Wales v. Commonwealth* 20 Com. L.R. 54).

The State enactment whose validity was attacked in that case provided that the Government might by notification in the Gazette declare that any wheat referred to was acquired by His Majesty and upon such publication such wheat became the property of the Crown, the rights and interests of every owner of wheat being converted into a claim for compensation against the Government. The Government thus commandeered the whole wheat and prevented any export, of the commodity. It was argued that deprivation of ownership prevented inter-state trade and thus brought the legislation into conflict with S. 92. This argument was repelled by Isaacs J., who pointed out that "trade and commerce" consisted of acts and not things, and that the goods were by the act of expropriation withdrawn from the subject of trade and commerce. In the words of Griffith, C. J. "S. 92 has nothing to say to the questions of title. The duration of the power of disposition, which depends on title is co-extensive with the duration of the title itself and ceases with it." The Court accordingly came to the conclusion that the Act was valid and did not infringe S. 92. In this type of cases as pointed by Isaacs, J. in *James v. Cowan*, 43 Com.L.R. 386; "The act authorises expropriation *simpliciter*; it does not expressly or impliedly refer to inter-state trade or commerce, either as a criterion of authority or as a description or attribute of the property to be acquired". This distinction has been

possible in Australia, because the term used in S. 92 is "trade and commerce" and the goods themselves which are the objects of the trade or commerce are not directly mentioned in the section.

The validity of the legislation even in this type of cases as offending S. 92 was open to grave doubt after the observations of the Privy Council in *James v. Cowan* (1932 A.C. 542) where their Lordships referring to the *Whitely case* stated: "This is based on the view that S. 92 does not affect powers of acquisition which merely changes ownership, and does not regulate the disposition of goods by the owner. In substance it means that the Crown becomes the owner and the Crown can do what it pleases with its own, dispose of it inter-state or not as it chooses. Their Lordships would not be prepared to assent to it in that simple form. If the real object of arming the minister with the power of acquisition was to enable him to place restrictions on inter-state commerce as opposed to a real object of taking preventive measures against famine or disease and the like, the legislation is as invalid as if the legislature itself had imposed the commercial restriction". The decision must be deemed to be overruled by the Judgment of the Privy Council in *James v. Commonwealth of Australia*, (1936 A.C. 578, at p. 617-618;) and it must now be taken as authoritatively settled that there is no magic in expropriation.

If the validity of the legislation is doubtful under the Commonwealth Act S. 92, it is submitted it is *a fortiori* under this section as the restriction on legislative capacity under Clause (a) is even more pronounced than under S. 92, and the distinction attempted in Australia that such legislation might touch the goods but does not touch "commerce" cannot be drawn here.

(2) *Foggit v. New South Wales*, (21 Com.L.R. 357) typifies the other form which such legislation assumes. Here the Crown does not seek to expropriate, but to regulate the trade and for that purpose to detain the goods and to prevent export of the commodity. The legislation of New South Wales regarding dried fruits which came up before the Judicial Committee in *James v. Cowan*, (1932 A.C. 542) really belongs to this type. The Judicial Committee held in that latter case, as had been held by the High Court of Australia in the leading case first mentioned, that the legislation was *ultra vires* as offending S. 92. It is submitted that equally this type of legislation is prohibited under this section as the restraint on the goods is even more pronounced than in the former type of case.

It is however submitted that a restriction of production in the interests of trade would not fall within Clause (a) of this section merely because the indirect or incidental effect of it would be to diminish the total quantity of goods in the Province and therefore also of goods available for export. *Quære*, whether under the terms of Clause (a) even in the event of a war or famine in a Province a law or executive order preventing the export of foodstuffs from the Province would be within the Provincial legislative or executive power.

It should be noted in this connection that under this Act it is not a question of competing legislatures but of absolute incapacity to enact the measure: for trade and commerce being an exclusively provincial subject, the Federal Legislature has no power in that field, and when an incapacity is created on the Provincial legislature the want of power cannot be made good by legislation by any other legislative body.

Licensing.—Would legislation requiring licences to be taken out by dealers of goods be invalid for the reason that such legislation may indirectly affect the import of goods. It is submitted that as such legislation is only a regulation of arts and callings and not a direct restraint on the import or export of trade, and so would be valid. In such cases however if the licensing provisions were discriminatory, it would seem that it would be an infringement of Cl. (b), and in this connection the American case of *Welton v. Missouri*, (97 U.S. 275) may be usefully compared. In that case the Supreme Court of the United States held that a State Law forbidding the sale by pedlars of articles not produced or manufactured in that State, but requiring no licence for vending domestic goods was held *ultra vires*. The Court held that a tax upon the business of selling goods was in effect a tax upon the goods themselves, and that the "Commerce power of the Congress continues until the commodity has ceased to be the subject of discriminating legislation by its foreign origin."

A further question which has frequently arisen in Australia is whether the licensing of vehicles engaged in inter-state trade would infringe the restrictions imposed by this section. The problem may be considered under two aspects; where the licensing provisions are discriminatory and where they are not so. Where the legislation is not discriminatory it has been held to be valid. In the words of Rich, J. "A regulation of an incident of commerce which is calculated to guide it conditions the exercise of rights which previously existed." (*R. v Viccard* 50 Com. L.R. 30 at p. 32). If this were the interpretation of S. 92 of the Commonwealth of Australia Act, it should *a fortiori* apply here, for it is only a direct restraint on the goods that is prevented by the section. It is submitted that in order that a restriction should fall within the mischief of this section it should be a direct restriction operating on the goods and in their character as articles of export or import. This class of legislation therefore cannot be attacked as *ultra vires*.

If however the legislation is discriminatory, say, as between the different frontiers of a Province, it would seem to be bad for under Cl. (b) the tax, toll or *due* need not be against the goods directly, but if as between goods of different localities, there is in effect any discrimination—the legislation is rendered void.

Price-Control.—We may next consider the validity of "price-fixing Legislation"—making it unlawful to sell goods either, below or above the price fixed by the Act. In *McArthur, Ltd. v. Queensland*, (28 Com.L.R. 530) such legislation by a State was held to infringe S. 92 so far as it extended to the sale of goods from other States; The argument that the legislation sought no more than to interfere with the freedom of contract and that the law of contract was within the exclusive province of the State, was repelled on the ground "that a law which prohibited the freedom of contract with regard to the price of a given commodity was not a branch of the law of civil contract but a branch of the law of trade." It is however submitted that such legislation not directly affecting the goods would not be *ultra vires* under this section, notwithstanding that it may remotely have a bearing on the freedom of export or import, for the restriction imposed on the legislature has regard not to trade or commerce, but to the goods themselves which are the subject of the trade.

As the power of the Province extends only to the regulation of trade and commerce within the Province, it would seem, that the legality of a tax on advertisements within a Province of goods sold outside the Province, would be doubtful. For instance the Supreme Court of the United States has held that a State Legislature is incapable of placing restrictions even by way of regulation on commission agents who procure business on C.O.D. terms for vendors of goods outside a State. (*Real Silk Hosiery Mills v. Portland*, 268 U.S. 325.)

Federal Power.—The question of the extent of Federal power to regulate trade and commerce may now be noticed. In regard to the Australian Constitution it has been held that the Commonwealth equally with the States is bound by S. 92 and that the imposition of restrictive regulations in the matter of inter-provincial trade is a prohibited area denied to both State and Commonwealth Legislatures. (*James v. Cowan*, 1932 A.C. 542; *James v. Commonwealth of Australia*, 1936 A.C. 578).

In this connection two points may be stated as arising under this Act.

(1) There is no specific power in the Federal Legislature or Government to regulate inter-provincial trade and commerce.

(2) The restrictions on the powers of Provincial Legislatures imposed by this section which guarantee to trade and commerce freedom from restrictive or discriminatory regulations do not apply to the Federation. In both these respects the position differs from that of the Federal Centre in Australia.

The existence however in the Federal Legislature of the power to regulate the machinery of commerce must be noticed. Thus the entire law of transportation by railroads together with the regulation of fares; the law relating to liability of Railways for loss in transit; through-traffic; shipping and navigation; carriage of passengers and goods by sea and air are within the exclusive Federal sphere. Similarly the law relating to the instruments of Commerce as Cheques, Bills of Exchange, and Negotiable Instruments and the most important medium of trade—money—are all exclusively Federal. While the entire field of labour legislation and the law relating to contracts including sale of goods is within the Concurrent List and therefore an area

where the Federal Legislature has supremacy. It would therefore seem that the lack of specific power is in part made up by other enumerated powers, and that a gap exists only in regard to the direct and actual control of regulation of the production or distribution of goods intended for inter-provincial or foreign trade.

The absence of a general inhibition against restrictive regulation does place the Federal Legislature under this Act in a better position than the Commonwealth Parliament, but by reason of the absence of "trade and commerce" as a Federal subject, such regulation must of necessity be indirect. Nor is it to be forgotten that the specific enumeration in the provincial list is bound to affect the construction of the scope of the Federal power under other enumerated heads. This is especially so as from the nature of the case the regulation of inter-provincial trade without affecting trade and commerce within a Province is difficult if not impossible.

Distinction between Cl. (a) and (b).—The point of distinction between Cl. (a) & (b) is that in regard to the former as explained already the restriction or prohibition has to operate directly on the goods, and in their character as articles of import or export, while in the latter clause, the duty or tax need not be directly on the goods, but it appears that it would be sufficient to attract the prohibition of the section if in its effect it is discriminatory as between goods of different localities. It is submitted, that while the "pith and substance" doctrine may be applicable to determine the legislation falling within Cl. (b) and that an enquiry as to the "real purpose or object of the legislation falling within Cl. (b) and that an enquiry as to the "real purpose or object of the legislation" would be a proper subject of investigation under that clause, such an inquiry is not legitimate in the case of Cl. (a).

The American rule, whereby inter-state commerce is free from taxation by the States, as infringing the power of the congress cannot apply here, as all goods are subject to provincial taxation under this Act, and the only prohibition is against discriminatory taxation as between goods of different localities. So that it is unnecessary to go into the refinements of the 'Original package doctrine'.

Commodities.—This was the expression originally used in item 28 of the Bill (now item 29). But during the committee stage, the expression 'commodity' was dropped from the clause and the word 'goods' was substituted, and the expression 'goods' was defined in S. 311 (2) as "including commodities". The consequential amendment was omitted to be carried out in this section; but it is submitted that it does not result in any difference in the content of the section. The question whether the expression "commodity" is narrower than "goods" as defined in S. 311, is academic since the Provinces are prevented by reason of item 29 from prohibiting or restricting the import or export of "goods" of any class or description.

298. (1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.

Persons not to be subjected to disability by reason of race, religion, etc.,

(2) Nothing in this section shall affect the operation of any law which—

(a) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class; or

(b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

NOTES.

Declaration of Fundamental Rights.—*Sir S. Hoare* thus explained the origin of this section:—"The Indian delegates were anxious to have some declaration of fundamental rights. The request that they pressed upon the Joint Select Committee and the various Round Table Conferences was that somewhere or other the effective words in Queen Victoria's Proclamation should be repeated. These are the words substantially from Queen Victoria's Proclamation. They have become consecrated by long usage in the minds of Indians and the wise course is to retain the words." (*Parl. Deb. Vol. 300, Cols. 1048-1049.*)

Speaking of this demand of the Indian delegation that the Constitution Act should embody certain fundamental rights the Joint Parliamentary Committee observed: "The question of so-called fundamental rights, which was much discussed at the three Round Table Conferences, was brought to our notice by the British India Delegation, many members of which were anxious that the new constitution should contain a declaration of rights of different kinds, for reassuring minorities for asserting the equality of all persons before the law, and for other like purposes; and we have examined more than one list of such rights which have been compiled. The Statutory Commission observe with reference to this subject:—"We are aware that such provisions have been inserted in many Constitutions, notably in those of the European States formed after the war. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective. With these observations we entirely agree: and a cynic might indeed find plausible arguments, in the history during the last ten years of more than one country, for asserting that the most effective method of ensuring the destruction of a fundamental right is to include a declaration of its existence in a constitutional instrument. But there are also strong practical arguments against the proposal, which may be put in the form of a dilemma: for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind, or its legal effect will be to impose an embarrassing restriction on the powers of the Legislature and to create a grave risk that a large number of laws may be declared invalid by the Courts because inconsistent with one or other of the rights so declared. An examination of the lists to which we have referred shows very clearly indeed that this risk would be far from negligible. There is this further objection, that the States have made it abundantly clear that no declaration of fundamental rights is to apply in State territories; and it would be altogether anomalous if such declaration had legal force in part only of the area of the Federation. There are however one or two legal principles which might, we think, be appropriately embodied in the Constitution, and we direct attention to them in the paragraphs which follow. There are others, not strictly of a legal kind, to which perhaps His Majesty will think fit to make references in any Proclamation which He may be pleased to issue in connection with the establishment of the new order in India". (*J. P. C. Rep. Para. 366.*)

They however recommended the insertion of a declaration in the form now found in this section. This section is in reality the counterpart of Chapter III of Part V which safeguarded the rights of British subjects of United Kingdom domicile and protects the rights of British subjects of Indian domicile.

The provision in the section in regard to the capacity to hold offices, has been on the statute book ever since 1833, (S. 87 of the Act of 1833) and was S. 96 of the Government of India Act 1915; the other provisions as to holding and disposing of property and carrying on occupations and professions are new and as already stated are taken from the analogy of Ch. III of Part V.

Sub-S. 2 (a).—This saves the validity of such legislation as the Punjab Land Alienation Act, and similar Acts in the United Provinces—the Bundelkand Land Alienation Act under which alienation of agricultural land in favour of communities other than those scheduled as agricultural is prohibited.

Cl. (b).—This saves certain customary laws in Punjab, etc., and particularly the law of pre-emption.

Sub-S. 3.—The need for this sub-section is thus pointed out by the Joint Parliamentary Committee:—"Inasmuch as the full effect of the proviso (sub-section 2

Cl. (a)] may have the result that the legitimate interest of minorities may be impaired while they are denied the right of appeal to the Courts for redress, we think that, in cases where the legitimate interests of minorities may be adversely affected and access to the Courts is barred by this proviso in the Constitution, the Governor should consider whether his special responsibility for the protection of minorities necessitates action on his part". (J.P.C. Rep., *Para.* 368).

Compulsory acquisition of land, etc., property in British India save by authority of law.

299. (1) No person shall be deprived of his

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

NOTES.

S. 299. Compulsory Acquisition of land.—The Joint Parliamentary Committee thus expressed themselves: "We think that some general provision should be inserted in the Constitution Act, safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation; in fact, much the same difficulties would be presented as those which we have discussed above in relation to fundamental rights. We do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated; but we think that it should secure that legislation expropriating, or authorising the expropriation of, the property of particular individuals should be lawful only if confined to expropriation for public purposes and if compensation is determined, either in the first instance or on appeal, by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property, or to extinguish or modify the rights of individuals in it, ought, we think, to require the previous sanction of the Governor-General or Governor (as the case may be) to its introduction; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation". (J.P.C., Rep. *Para.* 369). Cf. Para. XIII (c) of the Instrument of Instructions to the Governor-General and Para. XVII (c) of the Instructions to the Governor of Madras.

Sub-S. (1): Deprivation of property.—The protection conferred by this sub-clause is not confined to persons of any particular domicile or nationality, but is

available to protect the property of any person so long as the property is in British India. For "There is no reason why anyone living in any place should be deprived of his property in India save by operation of law". (*Parl. Deb.*, Vol. 300, Col. 1072).

Sub-S. (2): Compulsory acquisition for public purposes.—The Bill confined the protection to land belonging to private persons, but now the categories have been enlarged to include the acquisition of commercial and industrial undertakings or the interest in any company owning such undertakings.

For public purposes.—Is the declaration by the Legislature or by the Executive that the purpose for which the acquisition is made "a public purpose" binding on the Courts, or are the Courts at liberty to canvass the question? It is submitted that it would not be so open, and that it would be competent to the Legislature to enact particular purposes as public or clothe the Executive with authority so to notify as to be binding on the Courts. Cf. S. 6 of the Land Acquisition Act and *Wajyesekara v. Festing*, (1919) A.C. 646.

"Compensation."—Would legislation which did not provide full compensation for the expropriation of property—"full" in the view of the Courts—be invalid as not providing compensation under this section? It is submitted that such legislation cannot be impugned on that ground, provided some compensation is provided for. Even in America, where the Fourteenth Amendment to the constitution guarantees just compensation the Supreme Court held in *Chicago Railway Co. v. Chicago*, (166 U.S. 226) that the allowance of a sum of one dollar for the acquisition of the Railway Company's right of way by the City of Chicago to be constitutional as a just compensation. It is submitted that the question of what is a just compensation is a matter for the legislature to decide and has no bearing on the validity of the Legislation.

Sub-S. (3).—Speaking of this sub-section the *Attorney-General* said: "The purpose of this sub-section is undoubtedly to protect certain rights which exist and it is intended to give to the Governor-General the power to impose his sanction, so as to prevent any interference with such rights as those referred to in the paragraph." (*Parl. Deb.*, Vol. 300, Col. 1088).

The words "including rights or privileges in respect of land revenue" would protect the Jagirdars, inamdars, talukdars, etc.; and also the Zamindars with whom permanent settlement of revenue has been effected. These words are designed to protect in the legislative sphere, the persons who are dealt with in the administrative sphere in S. 300. The Instrument of Instructions para. 18 directs the Governor "to reserve but not to assent to any Bill which would alter the character of the Permanent Settlement." It is submitted that in the context the expression "alter" should be understood as meaning directly or substantially alter, the character of the settlement and not as including any legislation which seeks to impose burdens on the Zamindars along with the rest of the population though by reason of their wealth, they are harder hit by such legislation. See further notes to S. 300.

300. (1) The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant or confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered.

(2) No pension granted or customarily payable before the commencement of Part III of this Act by the Governor-General in Council or any Local Government on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General in the exercise of his individual judgment or, as

the case may be, of the Governor in the exercise of his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of the Federation or, as the case may be, the Province.

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made.

NOTES.

S. 300.—The Joint Parliamentary Committee explained their proposals in regard to the interests dealt with in this section thus: "There is a form of private property—perhaps more accurately described as "vested interest"—common in India, which we think requires more specific protection. We refer to grants of land or of tenure of land free of land revenue, or subject to partial remissions of land revenue, held under various names (of which Taluk, Inam, Watan, Jagir and Muafi are examples) throughout British India by various individuals or classes of individuals. Some of these grants date from Moghul or Sikh times and have been confirmed by the British Government; others have been granted by the British Government for services rendered. Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being. The terms of these grants differ: older grants are mostly perpetual modern grants are mostly for three, or even two generations. But whatever, their terms, a grant of this kind is always held in virtue of a specific undertaking given by, or on the authority of, the British Government that, subject in some cases to the due observance by the grantee of specified conditions the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant. A well-known instance of such rights is to be found in those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors of sanads by Lord Canning the then Governor-General, conferring proprietary rights upon all those who engaged to pay the *juma* which might then, or might from time to time subsequently, be fixed, subject to loyalty and good behaviour; and the rights thus conferred were declared to be permanent, hereditary and transferable.

"It is not unnatural that the holders of privileges such as we have described should be apprehensive lest the grant of responsible Government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration, should result in a failure to observe the promises which have been extended by Governments in the past to themselves or their predecessors in interests. Some of the claims to protection which have been urged upon us in this connection would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time, however strong the justification for its modification might prove to be in the light of changed circumstances, every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far-reaching a limitation upon the natural consequences of the change to responsible Government. We recommend, however, that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor as the case may be, to any proposal, legislative or executive, which would alter or prejudice the rights of the possessor of any privilege of the kind to which we have referred." (J.P.C., Rep. paras. 370-371).

"The reason for that date (1870) is obvious. A number of these grants were made in connection with services rendered to the Civil power at the time of the Mutiny. Although these grants were made in respect of services rendered during the Mutiny, owing to the leisurely manner in which things were done in India in those days the actual completion of the grant was protracted in some cases for many years. Therefore, it is necessary to put in a later date, not with a view to bringing in any new category of people, but simply to make sure that all grants made in respect of services before 1858 shall be brought within the section." (*Parl. Deb.*, Vol. 302, Col. 1047).

Closely connected with these are the rights of the Zemindars in whose favour permanent settlement of revenue has been made, in the Provinces of Bengal, Bihar

and Orissa, Madras and the United Provinces. Speaking of these zamindars and the protection to them of their vested interests the Joint Parliamentary Committee stated: "Briefly the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars, on the understanding that they collected and paid to Government the revenue assessed on that land, which was fixed at rates declared at the time be intended to stand unaltered in perpetuity. It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described; for while the privileges of the latter might, but for a protection such as we suggest, be swept away by a stroke of the pen with little or no injury to any but the holder of the vested interest himself, the alteration of the character of the land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population, in addition to those of the comparatively small number of Zamindars proper and might indeed produce an economic revolution of a most far-reaching character. Consequently no Ministry or Legislature in Bengal could, in fact embark upon, or at all events carry to a conclusion, legislative proposals which would have such results, unless they had behind them an overwhelming volume of public support. We do not dispute the fact that the declarations as to the permanence of the Settlement, contained in the Regulations under which it was enacted, could not have been departed from by the British Government so long as that Government was in effective control of land revenue. But we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to a Legislature, which is to be charged, *inter alia* with the duty of regulating the land revenue system of the Province, to alter the enactments embodying the Permanent Settlement, which enactments, despite the promises of permanence which they contain, are legally subject (like any other Indian enactment) to repeal or alteration. Nevertheless, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility. We recommend therefore that the Governor should be instructed to reserve for the signification of His Majesty's pleasure any Bill passed by the Legislature which would alter the character of the Permanent Settlement." (J.P.C., Rep. Para. 372).

Repeal of s. 18 of
21 Geo. 3, c. 70, and s.
12 of 37 Geo. 3, c. 142.

301. Section eighteen of the East India Company Act, 1780, and section twelve of the East India Act, 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed.

NOTES.

S. 301.—"The two archaic provisions purport to preserve the rights of the fathers of families under the Hindu or Mahomedan Law of that date, and they prescribe that any Act done by them" in consequence of the rule or law of caste "shall not be considered to be a crime even if it be an offence under the law of England." These provisions are certainly obsolete but apparently they have never been repealed. It is suggested that as an appeal to them might be awkward the present opportunity should be taken to get rid of them." (*Parl. Deb., House of Lords, Vol. 98, Col. 607*).

Vide, Schedule X, Items 1-2.

High Commissioner.

302. (1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment.

(2) The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor-General may from time to time direct.

(3) The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

NOTES.

S. 302.—The Joint Parliamentary Committee state:—"There has been a High Commissioner for India in London since 1920. Orders in Council framed under S. 29-A of the Government of India Act, make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India Office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject. (J.P.C. Rep. *Para. 404*).

Explaining the reason why the appointment should be made and the condition of service prescribed by the Governor-General in the exercise of his individual judgment, *Sir Samuel Hoare* said: "The High Commissioner will have two kinds of duties, one for the Federal Government and the Provincial Governments in India, and the other for the Governor-General acting in his discretion for the reserve department and for the sphere of Government that does not come within the Federal Government of India. As the High Commissioner will have to act in those two capacities it was thought that the proper method of action was that it should be the individual judgment of the Governor-General, namely, that the initiative in suggesting names will be with the Ministers, but that the final word should be with the Governor-General." (*Parl. Deb. Vol. 300, Col. 1100*).

General Provisions.

Provisions as to Sheriff of Calcutta. 303. (1) The Sheriff of Calcutta shall be appointed annually by the Governor of Bengal from a panel of three persons to be nominated on the occasion of each vacancy by the High Court in Calcutta.

(2) The Sheriff shall hold office during the pleasure of the Governor and shall be entitled to such remuneration as the Governor may determine and no other remuneration.

(3) In exercising his powers with respect to the appointment and dismissal of the Sheriff, and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

NOTES.

S. 303.—The need for this special provision was thus explained in the House of Lords: There is and has for many years been a Sheriff in the three Presidency Towns of Madras, Calcutta and Bombay. In Bombay and Madras the appointment is made by the Governor in Council under the Original Letters Patent of the Supreme Courts at those places dating from 1823 and 1800 respectively. In those Provinces the office has for some time been purely honorary and honorific. In Calcutta, however, the Sheriff who is there appointed by the Governor-General in Council under the Charter establishing the Supreme Court dated March, 1774, is still responsible for the execution of writs of the High Court and for the service of process. He maintains his own staff for this purpose and, after charging service fees, which are fixed by the High Court, he retains any surplus there may be. For some years there has been a considerable surplus, and both the Bengal Government and the Government of India agree that it is desirable in these circumstances that the authority who appoints the Sheriff fixes his remuneration and, if need be, dismisses him, should be one which is not dependent entirely upon political influence and possible intrigue. (*Parl. Deb., House of Lords, Vol. 97, Col. 1326*).

304. Any person appointed by His Majesty to act as Governor-General or as the Governor of a Province during the absence of the Governor-General or the Governor from India, or during any period during which the Governor-General or the Governor is for any reason unable to perform the duties of his office, shall during, and in respect of, the period while he is so acting have all the powers and immunities, and be subject to all the duties of, the Governor-General or Governor, as the case may be, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor-General or Governor.

Secretarial staffs of Governor-General and Governor. 305. (1) The Governor-General and every Governor shall have his own secretarial staff to be appointed by him in his discretion.

(2) The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them shall be such as the Governor-General or, as the case may be, the Governor may in his discretion determine, and the said salaries and allowances and the expenses incurred in providing the said accommodation and facilities shall be charged on the revenues of the Federation or, as the case may be, the Province.

NOTES.

S. 305. —The Joint Parliamentary Committee in recommending adequate secretarial staff to the Governors stated:—"It is essential that the Governor should have at his disposal an adequate personal and secretarial staff of his own. This is recognised in the White Paper, where it is proposed (rightly, in our opinion) that the salary and allowances of such a staff are to be fixed by Order in Council, and, though included in the annual proposals for the appropriation of revenue are not to be submitted to the vote of the Legislature. We think also that there should be at the head of his staff a capable and experienced officer of high standing. Such an officer would be a man fully conversant with the current affairs of the Province and in close contact with the administration but we do not for a moment contemplate as some of the Indian delegates seemed to think, that he should occupy in any sense a position analogous to that of a Deputy-Governor. There is no precise analogy between his position, as we conceive it, and that of any present-day civil servant in Whitehall; and we have no doubt that his duties will vary from time to time as constitutional practice and usage grow. In some respects he will occupy the position at present filled by the Governor's Private Secretary, but with duties of a wider and more responsible character. We think it right that he should in future be known by some other designation, and we suggest for consideration that of Secretary to the Governor". (J.P.C., Rep. Para. 101).

The proposal in the White Paper to fix the salary and allowances of the secretarial staff by Order in Council was abandoned, and it was considered sufficient, to leave it to be fixed by the Governor in his discretion.

306. (1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any court in India against any person who has been the, Governor-General, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:

Protection of Governor-General, Governor or Secretary of State.

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in Chapter III of Part VII of this Act.

(2) The provisions of the preceding subsection shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General.

NOTES.

S. 306 This is an enlargement of the protection formerly afforded to the Governor and Governor-General by S. 110 of the Government of India Act 1919. They were under that Act not subject to the Original Jurisdiction of the High Court in respect of acts ordered or done in their public capacity, they were however liable to the High Court's original criminal jurisdiction for treason or felony. They were subject to courts in the mofussil. The present section is all comprehensive and protects the Governor-General, the Governor and the Secretary of State from all "process" whatsoever—including even a summons to appear as witness. It extends to all Courts in India Civil and Criminal and applies not merely to their public acts but even to acts in a private capacity; *e.g.*, even a suit for recovery of a debt will not be. Cf. *Hill v. Bigge*, 1841, 3 Moo.P.C. 465 where a suit was held to lie for a debt against the Colonial Governor of Trinidad. There is however power reserved to His Majesty in Council to relax the provisions of this section and permit proceedings to be taken. The liability of these officials to be proceeded against in England, for their personal acts, so far these proceedings could be initiated in the English Courts is not affected. Moreover, though Chapter XI of the Government of India Act is repealed, these officials could be punished for criminal action in India, by the Court of King's Bench under the Governor's Act 1699 is amended by later Acts.

The exemption from jurisdiction formerly afforded by S. 110 extended to Executive Councillors and ministers—but the protection in their case has not been re-enacted by this Act. It was on the ground of this personal exemption that it was held that no *certiorari* could be brought against the Act of the Ministry. (*Venkataratham v. Secretary of State for India*, 53 Mad. 979 (60 M.L.J. 25).)

Removal of certain disqualifications on the occasion of the first elections to Legislature.

307. For purposes of the first elections of persons to serve as members of the Federal Legislature and of Provincial Legislatures, no person shall be subject to any disqualification by reason only of the fact that he holds—

(a) an office of profit as a non-official member of the Executive Council of the Governor-General, or a Governor, or as a minister in a Province;

(b) an office which is not a whole time office remunerated either by salary or by fees.

308. (1) Subject to the provisions of this section if the Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner, present to the Governor-General or, as the case may be, to the Governor an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

Procedure as respects proposals for amendment of certain provisions of Act and Orders in Council.

The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority, together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament.

In performing his duties under this subsection the Governor-General or the Governor, as the case may be, shall act in his discretion.

(2) The amendments referred to in the preceding subsection are—

(a) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States;

(b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature;

(c) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf; and

(d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

(3) So far as regards any such amendment as is mentioned in paragraph (c) of the last preceding subsection, the provisions of subsection (1) of the section shall apply to a resolution of a Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and, in the case of a resolution of a Provincial Legislature, from the commencement of Part III of this Act.

(4) His Majesty in Council may, at any time before or after the commencement of Part III of this Act, whether the ten years referred to in the last preceding subsection have elapsed or not, and whether any such address as is mentioned in this section has been submitted to His Majesty or not, make in the provisions of this Act any such amendment as is referred to in subsection (2) of this section:

Provided that—

(i) if no such address has been submitted to His Majesty, then, before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting

nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or as the case may be, the Provincial Legislature support the proposal;

(ii) the provisions of Part II of the First Schedule to this Act shall not be amended without the consent of the Ruler of any State which will be affected by the amendment.

NOTES.

S 308.—The Statutory Commission recommended, that the Provinces in relation to which alone a grant of responsibility was recommended should be rendered competent of themselves after the expiry of 10 years from the inauguration of the Constitution to effect alterations in the boundaries, number or distribution of constituencies, changes in franchise and changes in the method of representation of particular communities. They suggested however as a safeguard that such measures should be passed by a 2/3 majority of the legislatures which included a two-thirds majority of the members representing the community concerned.

The White Paper 1933 contained no proposals on this subject for or against, but in proposal 110 it was stated that the Indian Legislatures would not be competent to alter the Constitution Act except to the extent permitted, without laying down specially the matters on which such permission would be granted.

During the Round Table Conferences, Mr. Jayakar indicated a procedure for the association of the Indian Legislatures with Constitutional changes in the field of the franchise and composition of the legislatures which came to be known as the "Jayakar procedure" and which was accepted by the Joint Parliamentary Committee and is now embodied in this section. The Joint Parliamentary Committee stated the problem in these words:—"We have given reasons for our conviction that a specific grant of constituent powers to authorities in India is not at the moment a practicable proposition. We think, however, that a plan whereby the new Legislatures can be associated with the modification hereafter of the provisions of the Act, or of any Order in Council, relating to the composition and size of the Legislatures or the qualifications of electors, is very desirable. It is, of course, competent for any Legislature in India to pass a Resolution advocating a constitutional change, with a request that its Resolution should be forwarded to His Majesty's Government for consideration, and for this no provision in the Constitution Act would be required. But in our view it ought hereafter to be possible, under specified conditions, for a responsible Government in India, with the approval of its Legislature, to be assured that any such Resolution is actually taken into consideration by His Majesty's Government and their decision upon it formally recorded. We recommend, therefore, that, where an Indian Legislature has passed a Resolution of this kind and has presented an Address to the Governor-General or Governor, as the case may be, praying that His Majesty may be pleased to communicate it to Parliament, the Resolution shall be laid before both Houses of Parliament not later than six months after its receipt, with a statement of the action which His Majesty's Government propose to take upon it." (*J. P. C. Rep. Para. 380*).

Sir S. Hoare explained the section thus: "It is provided that, after a specified period, an Indian Legislature should have a formal procedure under which its resolutions on the points set out in the Section would have to be taken into account by the Imperial Parliament. Parliament is not tied in any way. All that would happen would be that resolutions sent to the Secretary of State under the procedure set out in the section would be taken into account. I attach importance to the safeguard that this procedure cannot come into operation for 10 years. I think it is very important that we should have as much stability as possible in the early years of these constitutional changes. I should have thought that with that safeguard, this was on the whole a satisfactory kind of procedure, namely, that the legislature should be able to send forward its resolutions and that Parliament should have to take formal

notice of them. As I say the hands of Parliament are, not tied in any way." (*Par. Deb.*, Vol. 300, Cols. 1102-1103).

The *Solicitor-General* explained the object of the expression "on behalf of the Council of Ministers" thus:—"May hon. Friend has put his finger on an interesting point, but the Clause has in fact been drafted to meet the position. If one had not these rather unusual words "on behalf of the Council of Ministers" it might have been said that this was an executive act with which the Governor or Governor-General would have had to associate himself or from which he would have had to dissociate himself at the initial stage. Therefore, it has been put in this form so that the Council of Ministers can proceed as far as the technical and constitutional position is concerned on their own responsibility, because it is assumed under the Clause that the Governor should be there to express his opinion in his discretion on what they propose, and what *a fortiori* has been approved by the Legislative Assembly." (*Par. Deb.*, Vol. 302, Cols. 1050-1061).

Sub-S (4) -This saves the right of Parliament to make amendments notwithstanding that the 10 year period has not elapsed.

309. Any power conferred by this Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Act, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolutions of both Houses:

Provided that, if at any time when Parliament is dissolved or prorogued, or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(2) Subject to any express provision of this Act, His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding subsection, revoke or vary any Order previously made by him in Council under this Act.

(3) Nothing in this section applies to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning the taking of proceedings against a person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, the Governor of a Province or the Secretary of State.

310. (1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act to the provisions of this Act, and in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act:

Power of His Majesty in Council to remove difficulties

And whereas the nature of those difficulties, and of the provision which should be made for meeting them, cannot at the date of the passing of this Act be fully foreseen:

Now therefore, for the purpose of facilitating each of the said transitions His Majesty may by Order in Council—

(a) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified ;

(b) make, with respect to a limited period so specified such temporary provision as he thinks fit for ensuring that, while the transition is being effected and during the period immediately following it, there are available to all governments in India and Burma sufficient revenues to enable the business of those governments to be carried on ; and

(c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No Order in Council in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act shall be made under this section after the expiration of six months from the establishment of the Federation, and no other Order in Council shall be made under this section after the expiration of six months from the commencement of Part III of this Act.

Interpretation.

311. (1) In this Act and, unless the context otherwise requires, in Interpretation, etc any other Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

“British India” means all territories for the time being comprised within the Governors’ Provinces and the Chief Commissioners’ Provinces ;

“India” means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India ;

“Burma” includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of Part III of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam ;

“British Burma” means so much of Burma as belongs to His Majesty ;

“Tribal areas” means the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State ;

“Indian State” includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India ;

“Ruler” in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

"agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

"borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly;

"chief justice" includes in relation to a High Court a chief judge or judicial commissioner, and "judge" includes an additional judicial commissioner;

"corporation tax" means any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorising companies to make deductions in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application;

"corresponding Province" means in case of doubt such province as may be determined by His Majesty in Council to be the corresponding Province for the particular purpose in question;

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;

"existing Indian law" means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of Part III of this Act by any legislature, authority or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation;

"goods" includes all materials, commodities, and articles;

"guarantee" includes any obligation undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount;

"High Court" does not, except where it is expressly so provided, include a High Court in a Federated State;

"Local Government" means any such Governor in Council, Governor acting with ministers, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not, save where the context otherwise requires, include any Local Government in Burma or Aden;

"pension" in relation to persons in or formerly in the service of the Crown in India, Burma or Aden, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

"pleader" includes advocate;

"Provincial Act" and "Provincial law" mean, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature established under this Act;

"public notification" means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province;

"securities" includes stock;

"taxation" includes the imposition of any tax or impost whether general or local or special, and "tax" shall be construed accordingly;

"railway" includes a tramway not wholly within a municipal area;

"federal railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway;

"Indian State railway" means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government, the Federal Railway Authority, or any company operating a federal railway;

"minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a Federal railway, whether of the same gauge or not" and

"unit" means a Governor's Province, Chief Commissioner's Province or a Federated State.

(3) No Indian State shall, for the purpose of any reference in this Act to Federated States, be deemed to have become a Federated State until the establishment of the Federation.

(4) In paragraph (3) of section eighteen of the Interpretation Act, 1889 (which paragraph defines the expression "colony") for the words "exclusive of the British Islands and of British India" there shall be substituted the words "exclusive of the British Islands and of British India and of British Burma."

(5) Any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts, or authorities in, or to matters relating to the government or administration of India or British India shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of this Act or the Government of Burma Act, 1935.

Any power of any Legislature under this Act to repeal or amend any Act adapted or modified by an Order in Council under this sub-section shall extend to the repeal or amendment of that Order and any reference in this Act to an Act of Parliament shall be construed as including a reference to any such Order.

(6) Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor-General or a Governor-General's Act or, as the case may be, to an ordinance made by a Governor or a Governor's Act.

(7) References in this Act to the taking of an oath include references to the making of an affirmation.

S. 311.—It is obvious that this Act being an Act of Parliament, the general rules of construction enacted in the Interpretation Act, 1889 would govern the construction of the Act.

Interpretation and Constructions of the Constitution.—It is part of the functions of a Court of Law to pronounce on the meaning of the terms in which the provisions of a written Constitution are framed, and this is especially so in a Federal Constitution, where the Courts have to ensure the strict adherence of the several legislatures to the bounds of their respective competence. This process is compendiously called the "interpretation" of the Constitution. In the words of

Cooley. "Interpretation differs from construction in that the former is the art of finding out the true sense of any form of words. Construction on the other hand is the drawing of conclusions respecting subjects that lie beyond the direct expression of the text; conclusions which are in spirit, though not within the letter of the text." According to Wyne, "Interpretation is the process of ascertaining the actual meaning of the words used, while construction denotes the art of discovering the meaning of the terms with reference to their application to a given case when such application is doubtful by reason either of some apparent inconsistency in the document itself, or of the fact that the particular case is not literally provided for. Construction is thus a synthetic process consisting in the "building up" of the intention sought to be conveyed from the consideration of many elements" (Legislative & Executive power in Australia Ch. II).

The rule of construction applicable to the construction of the words of a Constitution is the same as that applicable to other written documents. See *Hebb v. Outram*, 1907 A.C. 31 & *British Coal Corporation v. King*, 1935 A.C. 500.

The true test must, as always be, the actual language used, and the intention of the framers of the Statute can be ascertained only from the language of the section. Nothing is to be read into it on grounds of policy, or the necessity supposed to arise from the federal form the constitution. (*Hebb v. Outram*, 1907 A.C. 81). Nor is the possibility of abuse of a power to be considered as affecting the plain words of the constitution: *Vacher & Sons v. London Society of Composers*, 1913 A.C. 107 at p. 118).

As was stated by Lord Selbourne in *Queen v. Burah* (3 A.C. 889 at 904): "The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question, and the only way in which they can properly do so is by looking to the terms of the instrument by which affirmatively the legislative powers were created, and by which negatively they were restricted." When therefore a right or power is challenged, the duty of the court is to keep close to the words of the constituting instrument and see first whether the power is granted and secondly whether there is anything else which restricts the rights so granted. If the text is explicit, the text is conclusive, alike in what it directs and in what it forbids [*J.G. for Ontario v. J.G. for Canada*, (1912 A.C. 571)]. "It may be that those who framed the wording of the enactment were under the impression that it afforded protection greater than their Lordships held to be the case. . . . The question is not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the Legislature if violence were done to the language in which their legislation has taken shape, but such a course would on the whole be quite as likely to defeat as to further the object which was in view." (*City of Winnipeg v. Barnett*, 1892 A.C. 445).

Notwithstanding that there is no different rule of construction courts cannot but be alive to the fact that it is the Construction of a Constitutional enactment that is involved. "The Privy Council has indeed laid down that Courts of Law must treat the provisions of the British North America Act, by the same methods of construction and exposition, which they apply to other statutes. But there are statutes and statutes and the strict construction deemed proper in the case for example of a penal or taxing statute or one passed to regulate the affairs of an English parish, would often be subversive of Parliament's real intent if applied to an Act passed to ensure the peace order and good Government of a British Colony." (Clements-Canadian Constitution 3rd Edn. cited in *Edwards v. J.G. for Canada*, 1930 A.C. 124 at p. 137).

Wide Construction of the powers.—A Constitution designed to serve the growing purpose of a country permanently must receive some breadth of interpretation. "A Constitution must not be construed in any narrow or pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered as the years go on in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the word changes but the changing circumstances illustrate and illuminate the full import of that

meaning". (*James v. Commonwealth of Australia*, 1936 A.C. 614) In interpreting a constituent and organic statute such as the Act that construction most beneficial to the widest possible amplitude of the powers of the legislatures must be adopted (*British Coal Corporation v. The King*, 1935 A.C. 500 at 518).

Nor are the conventions of the constitution to be omitted from consideration in its interpretation. In *Commercial Cable Co. v. Government of Newfoundland*, (1916 (2) A.C. 610) it was held that the principle of responsible government controlled the question of the liability of the Crown under an agreement made by the Government.

Construction put by the Legislature—The construction which a legislature has put upon its own powers by assuming to act in accordance with that view, does not bind the courts. Acquiescence for no length of time can legalise an usurpation of power, nor can a legislature purport to declare the meaning of the Constitution for the legislature cannot add to its own powers. "Time alone will not validate an Act which when challenged is found to be *ultra vires*, nor will a history of a gradual series of advances till this boundary is crossed avail to protect the ultimate encroachment." *Proprietary Association v. A.G. for Canada*, 1931 A.C. 310 at p. 317.

"Progressive Interpretation"—A rule governing the construction of statutes is that the terms therein must be construed in the light of the meaning which they bore at the date of the passage of the Statute. Cf. *Trustees of Clyde Navigation v. Lord*, 8 A.C. at p. 673. As applied to the construction of a Constitution however the application of the rule is attended with difficulty, as the Constitution is unlike other statutes intended to be permanent, and a change of the Statute to meet the needs of the time is much more difficult to compass. Accordingly the adoption of a slightly different rule in the interpretation of a Constitution has authority in its favour. The rule in question has been designated the rule of "generic" or "progressive" interpretation.

"The doctrine of progressive interpretation may be stated to be the view that Constitutions, being essentially designed to serve a permanent and not merely a temporary end, where there is no express command or prohibition; but only general language to be drawn from the four corners of the instrument the chief consideration in their construction should be present conditions, relations and requirements and that when the language of the Constitution under consideration will bear it, these should determine the interpretation". (*Kerr on the Law of Australian Constitution*). *Toronto Corporation v. Bell Telephone Co.*, 1905 A.C. 52. Cf. *The Regulation and Control of Radio Communications*, 1932 A.C. 304, *The Regulation and Control of Monopolies in Canada* in re, 1932 A.C. 54.

Dr. Wynes explains the rule in these terms "The meaning of the terms of the constitution do not undergo any change, for the nature of the grant of power remains always the same. The doctrine asserts no more than that new developments of the same subject and new means of executing an unchanging power do arise from time to time and are capable of control and exercise by the appropriate organ to which the power has been committed. In other words, while the power remains the same, its extent and ambit may grow with the progress of history". Cf. *A. G. of Br. Columbia v. A. G. of Canada*, 1937 A.C. 391, on the scope of the words 'Bankruptcy and Insolvency' in the British North America Act; see also the passage already cited from the judgment of Wright, M.R. in *James v. Commonwealth of Australia*, 1936 A.C. 578 at p. 614.

PART XIII.

TRANSITIONAL PROVISIONS.

312. The provisions of this Part of this Act shall apply with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation.

Operation of Part
XIII.

NOTES.

S. 312.—The scope of the provision for the transitional period between the establishment of Provincial Autonomy and the inauguration of the Federation was thus explained by Sir Samuel Hoare: "The position during the transitional period generally speaking is as follows: The only change made in the system of Indian Government as it exists now will be the change made by the setting up of provincial autonomy, which will mean the introduction of this strictly delimited list of subjects between the Provinces and the Centre. That list will come into force, the autonomous Provinces in future being responsible for the subjects set out in the provincial list. That in itself, will make a difference between the transitional period and the present system of government which is a unitary system of government."

"Apart, however, from the fact that the Provinces will be administering the provincial subjects and on that account the activities of the Central Government will be restricted, the present system of government at the Centre will continue, namely, the Governor-General and his Council and the Legislature dealing with the subjects that still remain central subjects. Further than that, there will, of course, be no change in the position of the Viceroy in the field of paramountcy. The effect of what I am saying is that we shall make substantially no change except the changes involved in the Provinces becoming responsible for the Provincial subjects." (*Par. Deb. Vol. 300, Cols. 1114-5*).

Accordingly so far as the Centre is concerned the present Government of India Act is continued with slight variations needed to adapt it to Provincial autonomy. (*Id.* S. 317 and Schedule IX).

313 (1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in Council, either directly or through officers subordinate to him but nothing in this section shall prevent the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) Subject to the provisions of this Act for the time being in force, the said executive authority extends—

(a) to the matters with respect to which the Indian Legislature has, under the said provisions, power to make laws;

(b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and to the governance of His Majesty's forces borne on the Indian establishment;

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas:

Provided that—

(i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;

(ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto; and

(iii) commissions in any such forces shall be granted by His Majesty, save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references to the Governor-General in Council, and any reference to the Federation, except where the reference is the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require:

Provided that—

(a) any reference to the revenues of the Federation shall be construed as a reference to the revenues of the Governor-General in Council;

(b) the revenues of the Governor-General in Council shall, subject to the provisions of chapter I of Part VII of this Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and to the provisions of this Act with respect to the Federal Railway Authority (so far as any such provisions are for the time being in force), include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General;

(c) the expenses of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of this Act for the time being in force to act in his discretion shall be defrayed out of the revenues of the Governor-General in Council.

(4) Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force until the establishment of the Federation, but, notwithstanding that Part II of this Act has not come into operation, the following provisions of this Act, that is to say—

(a) the provisions requiring the prior sanction of the Governor-General for certain legislative proposals;

(b) the provisions relating to broadcasting;

(c) the provisions relating to directions to, and principles to be observed by, the Federal Railway Authority; and

(d) the provisions relating to civil services to be recruited by the Secretary of State,

shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas as they have effect in relation to matters or functions with respect to, or in the exercise of, which the Governor-General is by the provisions of this Act for the time being in force required to act in his discretion, and any reference in any of the provisions of the Act for the time being in force to the special responsibilities of the Governor-General shall be construed as a reference to the special responsibilities which he will have when Part II of this Act comes into operation.

(5) Nothing in this section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of the functions of the Crown in its relations with Indian States.

NOTES.

S. 313.—This section is a reproduction of Ss. 7 and 8 *ante*—with the Governor-General in Council in place of the Governor-General, and the omission of the provisions relating to the Indian States. Owing to the absence of the Federal ministers there could be no question of the exercise of individual judgment during this period. Differences of opinion between the Governor-General and his executive Council would be governed by the present provision, *i.e.*, S. 41 (*Vide* Schedule IX).

314. (1) The Governor-General in Council and the Governor-General, both as respects matters with respect to which he is required by or under this Act to act in his discretion and as respects other matters, shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the Secretary of State, but the validity of anything done by the Governor-General in Council or the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this subsection.

(2) The Secretary of State shall not give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers.

(3) While this Part of this Act is in operation, the advisers of the Secretary of State shall not be more than twelve, nor less than eight, in number, and, notwithstanding anything in Part XI of this Act with respect to their term of office, on the establishment of the Federation such of the advisers as the Secretary of State may direct shall cease to hold office.

NOTES.

S. 314. *Sir Samuel Hoare* explained the position in these words:—"All that this section does is to keep the control of the Secretary of State exactly as it is now, with the one exception so far as Provincial autonomy is concerned. When Provincial autonomy is set up, the position of the Secretary of State will be that set out in the Act in connection with provincial autonomy. So far as the centre is concerned, the Secretary of State's control will continue just as before. (*Par. Deb. Vol. 300, Col. 1116*).

315. (1) While this Part of this Act is in operation, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the United Kingdom, the Secretary of State may, within such limits as may be prescribed by the Act, contract such loans on behalf of the Governor-General in Council.

(2) The Secretary of State shall not exercise any such powers of borrowing as are mentioned in this section unless at a meeting of the Secretary of State and his advisers the borrowing has been approved by a majority of the persons present.

(3) There shall be inserted—

(a) in paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, after the words "on the revenues of India"; and

(b) at the end of sub-paragraph (9) of paragraph (a) of section ten of the Trusts (Scotland) Act, 1921, the words "or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council under the provisions of Part XIII of the Government of India Act, 1935."

(4) No deduction in respect of taxes imposed by or under any existing Indian law or any law of the Indian, the Federal, or a Provincial Legislature shall be made, either before or after the establishment of the Federation, from any payment of principal or interest in respect of any loan contracted under this section.

(5) Any legal proceedings in respect of any loan raised under this section may, either before or after the establishment of the Federation, be brought in the United Kingdom against the Secretary of State,

but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

NOTES.

S. 315.—Speaking of Sub-S. (4) Sir Samuel Hoare stated —“The object of this sub-section is to continue in the transitional period the same arrangement for Indian loans, as far as Indian taxation is concerned, as exists at present” (*Par. Deb. Vol. 300, Col. 1116*).

316. The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature, and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the Indian Legislature:

Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money.

NOTES

S. 316.—Speaking of this section Sir Samuel Hoare said “The word “Powers” means the powers in the Federal and Provincial lists, simply the Legislative powers conferred by the two lists. The setting up of provincial autonomy would in itself considerably restrict the field of the activity of the Central Legislature. The Central Legislature at the present time can legislate over the whole field of Indian government. In the transitional period it will not be able to legislate over the very wide field of Provincial legislation.

“In the concurrent list again the legislative field of the Centre is being considerably restricted. At the present time it has full power over the whole field. In future it will not have power over the provincial list. The Central Legislature so far from having greater powers than it has now will have smaller powers in the transitional period.

“There can be no question of the executive at the Centre becoming responsible to the Central Legislature during the transitional period. The executive at the Centre during the transitional period will remain the Governor-General in Council, just as it is now, and there can be no question whatever that during the transitional period, a Government will be set up at the Centre responsible to the Central legislature.” (*Par. Deb. Vol. 300, Col. 1119*).

Sub-S. (2).—*Cf.* S. 162 as to the powers of the Federal Legislature to fix the limits within which the executive may borrow.

317. (1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, in the Ninth Schedule to this Act (being certain of the provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act:

Provided that nothing in the said provisions shall affect the provisions of the last but one preceding section.

(2) In the said provisions, the expression “this Act” means the said provisions.

(3) The substitution in the said provisions of references to the Secretary of State for references to the Secretary of State in Council shall not render invalid anything done thereunder by the Secretary of State in Council before the commencement of Part III of this Act.

318. (1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

(2) Nothing in this section affects any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act for the coming into operation, either generally or for particular purposes, of any of the provisions of this Act relating to the Federal Court, the Federal Public Service Commission or the Federal Railway Authority.

319. (1) Any rights acquired by, or liabilities incurred by or on behalf of, the Governor-General in Council or the Governor-General between the commencement of Part III of this Act and the establishment of the Federation shall, after the establishment of the Federation, be rights and liabilities of the Federation, and any legal proceedings pending at the establishment of the Federation by or against the Governor-General in Council or the Governor-General shall, after the establishment of the Federation, be continued by or against the Federation.

(2) The provisions of subsection (1) of this section shall apply in relation to rights and liabilities of the Secretary of State in Council which have, by virtue of the provisions of this Act, become rights or liabilities of the Governor-General in Council as they apply in relation to the rights and liabilities therein mentioned.

PART XIV.

COMMENCEMENT, REPEALS, ETC.

320. (1) Part II of this Act shall come into force on such date as His Majesty may appoint by the Proclamation establishing the Federation and the date so appointed is the date referred to in this Act as the date of the establishment of the Federation.

(2) The remainder of this Act shall, subject to any express provision to the contrary, come into force on such date as His Majesty in Council may appoint and the said date is the date referred to in this Act as the commencement of Part III of this Act.

(3) If it appears to His Majesty in Council that it will not be practicable or convenient that all the provisions of this Act which are under the foregoing provisions of this section to come into force on a date therein mentioned should come into operation simultaneously on that date, His Majesty in Council may, notwithstanding anything in this section, fix an earlier or a later date for the coming into operation, either generally or for particular purposes, of any particular provisions of this Act.

321. The Government of India Act shall be repealed and the other Acts mentioned in the Tenth Schedule to this Repeals. Act shall also be repealed to the extent specified in the third column of that Schedule:

Provided that—

(a) nothing in this section shall affect the Preamble to the Government of India Act, 1919;

(b) without prejudice to any other provisions of this Act, to the provisions of the Government of Burma Act, 1935, and to the provisions of the Interpretation Act, 1889, relating to the effect of repeals, this repeal shall not affect any appointment made under any enactment so repealed to any office, and any such appointment shall have effect as if it were an appointment to the corresponding office under this Act, or the Government of Burma Act, 1935.

NOTES.

S. 321.—*Proviso (a).* This Act, has not, unlike the Act of 1919 a preamble indicating the intentions of Parliament in enacting this measure. Indian opinion keenly desired the insertion in the Act of some provision indicating the goal of India as the attainment of Dominion Status. But perhaps for reasons explained by Lord Peel in the House of Lords. His Majesty's Government were against the proposal. Lord Peel stated

"I believe that if, following the request of many Indian leaders, you had put in the sacred words *Dominion Status*, you would have had a considerable amount of enthusiasm, but, apart from the fact that from the draftsman's point of view the phrase is not artistic, the words, while rousing feelings of satisfaction in political India, might also give rise to misunderstanding. Although the Indians may be emotional, and may respond to good will on our part, there are among them extremely acute and able lawyers. If you put this phrase in the Bill, those men would be constantly comparing the provisions of the Bill with the Constitutions of the self-governing Dominions and would draw most unfavourable comparisons between the powers granted to India and those enjoyed by the Dominions. The result—and a very dangerous result—would be that they would be led to charge us with that most terrible of all accusations, breach of faith, if we put the phrase into the Bill without perhaps fully appreciating all the deductions and inferences which could be drawn from it." (*Par. Deb. H.J. Vol. 97, Col. 601*).

The only concession that the Government were prepared to make was to retain, unrepealed the Preamble to the Act of 1919—notwithstanding that the Preamble therein referred to British India alone whereas this Act comprehends the Indian States in a Federation.

One cannot do better than quote the pertinent and acute observations of Dr. Keith on this question. He says: "A rather bitter controversy was waged over the question of the desire of the Labour and Liberal parties to include in the Bill a definite reference to Dominion Status as the goal of Indian Government. The Government adopted a curious attitude. It definitely accepted the pledge contained in the Preamble of the Act of 1919 of the gradual development of self-governing institutions with a view to the progressive realization of responsible government in British India as an integral part of the Empire, and the interpretation put thereon by the Governor-General in 1929 with the authority of the Government of the day: "The natural issue of India's progress as there contemplated is the attainment of Dominion status": But it refused to put anything of this kind in a preamble, and instead insisted on preserving the preamble to the Act of 1919, when repealing that measure under the new Act. The preservation of the smile of the Cheshire cat after its disappearance was justly adduced by critics as the best parallel to this legislative monstrosity, and the omission of any reference to Dominion status, following on the complete silence of the Joint Committee, inevitably caused a painful feeling in India, and annoyance to those supporters of the ministry who realized that its action was certain to be interpreted in India as in some way seeking to evade frank acceptance

of Dominion status as the final goal. (Keith-Constitutional History of India, pp. 315-316)

The reasons which led the Government to support the saving of the preamble to the 1919 Act from the repeal of it was thus explained in Parliament.

"The value of this Preamble is that it does express in terms to which the Government to-day still adhere, the intentions or policy of Parliament with regard to the progressive realisation of responsible Government in British India as an integral part of the Empire". (*Parl. Deb., Vol. 300, Col. 1364*).

"We desire to preserve the Preamble as a record of the intentions of Parliament; not the intentions of a party or of an individual or of a Minister, but the intentions of Parliament and, therefore, of the great English people with regard to the future of India.

"It is one thing to say that a Preamble does not contain a statement of the whole of the intentions of His Majesty's Government, and it is another thing to say that it is desirable to repeal that Preamble. We are constructing, I hope, a further stretch of a great Imperial road. The fact that we have passed particular point at which a signpost was erected as to the end which that road was intended to reach, does not justify us when we have passed the point in destroying the signpost that was erected at a particular stage in that great constructive enterprise.

"Let us see what the position would be if we were to repeal that Preamble. Would it not open the Government to the criticism that they were in some way going back upon the declarations that were made in that historic instrument? We do not propose to repeal this Preamble because we wish to preserve it as an indication of what the intentions of Parliament and of this country have been, we surely are justified in taking that course, and at the same time taking a further step which perhaps is not to be quite accurately described in the words of the Preamble.

"There is a considerable body of authoritative opinion which supports the view that the repeal of an Act of Parliament does not repeal the Preamble, the reason being that the preamble has no operative or objective effect at all. My noble friend asked me whether the effect of preserving the preamble would give it any operative effect. The answer is "No", it never had any operative or executive effect. That is why it is a preamble and not an enacting part of the 1919 Act. But doubts were expressed in certain quarters as to whether that was so, and it was suggested that if the complete Act were repealed, some persons who know no better would imagine that that involved the repeal of the preamble and the cancellation of the assertion contained in the preamble as to the objects of the legislation which the 1919 Act embodied and in pursuance of this Act has taken another step. That was obviously undesirable, because Parliament did not intend, and Parliament does not intend, by the enactment of this Bill, in any way to depart from the statement of intention contained in the preamble to the 1919 Act.

"In order to prevent any misconception, it has been thought desirable expressly to retain the preamble in existence, so as to show quite plainly to anyone who otherwise might draw a false inference that there has been no change in the policy and no departure from the principles which the preamble contains. Therefore, when the preamble remains, it will not be suspended in space. It will remain as it was, a statement of the intention of Parliament and it will remain as it was, without any enacting force, because that is never the function of a preamble. (*Parl. Deb. (H.L.) Vol. 98 Col. 159-160*).

"What is the purpose of leaving a Preamble in the air? You are repealing the whole of the rest of the Government of India Act; what will that un repealed part of the Preamble do?" The exact value of a Preamble is a matter which lawyers sometimes discuss, but I do not think that anybody has ever said that the Preamble has what lawyers call "an operative effect." It is, at best, a statement of the intentions of Parliament at a particular time, and may possibly be used by the Courts to throw some light on the interpretation of the operative parts of an Act. The value of that clause in the Preamble would obviously not be that, as we are going to repeal the whole of the operative parts of the Act, but the value of putting in a rather unusual provision to say that we wish to keep alive the Preamble but to repeal the rest of the Act is, I should have thought, that it shows that some rather unusual importance is

attached to a statement made 16 years ago, and that this Parliament still regards that as an accurate statement of the intentions of this great country towards British India, associated as it will be with the Indian States in Federation.' *Parl. Deb., Vol. 300, Cols. 1362-69*).

"Preambles are sometimes treated in a curious way. I remember that the Preamble to the Naval Discipline Act was inadvertently repealed by the Statute Law Revision Act, and Parliament, having noticed this, almost a generation later solemnly re-enacted that historic instrument, although it was not operative in a single word. Why did Parliament re-enact it? Not because it had any effect on the Naval Discipline Act, but because Parliament desired to enshrine permanently upon the Statute Book a notable statement of the purpose that the British Navy has played in the defence of this country. Preambles have a value much more than their mere formal words. This Preamble, we think, has a value which will speak as eloquently as it has in the past of the intentions of this country to help India attain finally the due place amongst His Majesty's Dominions to which we hope and believe this Act will give further assistance. (*Parl. Deb., Vol. 302, Col. 1367*).

SCHEDULES.

FIRST SCHEDULE.

Ss. 5, 18 and 308.

Composition of the Federal Legislature.

PART I.

REPRESENTATIVES OF BRITISH INDIA.

General Qualification for Membership.

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

(a) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(b) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age; and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Part of this Schedule as may be appropriate in his case:

Provided that the Ruler or a subject of an Indian State which has not acceded to the Federation—

(i) shall not be disqualified under sub-paragraph (a) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province; and

(ii) in such cases as may be prescribed, shall not be disqualified under the said sub-paragraph (a) to fill a seat allocated to a Chief Commissioner's Province.

NOTES.

Para. 1.—Explaining the proviso to para. (1) it was stated that:—

"This is put down in order to make clear that the subjects of Indian States may be able to be elected to the Federal Legislature and also may be able to be elected, provided that are qualified, to a Provincial Legislature. It would be a hardship that a powerful community of State subjects such as the Merwaris, who are engaged in commerce in India, should be ineligible to election". (*Par. Deb.* Vol. 301, col. 821.)

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

The Council of State.

3. Of the one hundred and fifty-six seats in the Council of State to be filled by representatives of British India one hundred and fifty seats shall be allocated to the Governors' Provinces, the Chief Commissioners' Provinces and the Anglo-Indian, European and Indian Christian communities in the manner shown in division (i) of the relevant Table of Seats appended to this Part of this Schedule, and six seats shall be filled by persons chosen by the Governor-General in his discretion.

NOTES.

Para. 3.—The Council of State, as the Provincial Upper Houses, has been formed on the principle that there shall be no representation of "special interests" as such in that Chamber. Representation of such interests is provided for in the Assembly.

4. To each Governor's Province, Chief Commissioner's Province and community specified in the first column of division (i) of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community, and of the seats so allotted to a Governor's Province or a Chief Commissioner's Province, the number specified in the third column shall be general seats, the number specified in the fourth column shall be seats for representatives of the scheduled castes, the number specified in the fifth column shall be Sikh seats, the number specified in the sixth column shall be Muhammadan seats, and the number specified in the seventh column shall be seats reserved for women.

NOTES

Para. 4.—This is designed to give effect to the "Communal award" under which a fixed percentage of seats have been allotted to the different communities, and separate communal electorates provided.

5. A Governor's Province or a Chief Commissioner's Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(a) for the election of persons to fill the general seats, if any;

(b) for the election of persons to fill the Sikh seats, if any; and

(c) for the election of persons to fill the Muhammadan seats, if any, or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

To each territorial constituency of any class one or more seats of that class shall be assigned.

NOTES

Para. 5.—Under the Scheme proposed in the White Paper 1933, the Federal Assembly was to be directly elected by territorial constituencies in the Provinces, while the Council of State was to be composed of persons elected by the Provincial Assemblies. But when the Joint Select Committee reversed that recommendation and suggested indirect election to the Federal Assembly by the members of Provincial Legislative Assemblies, a new constituency had to be created for the Council of State. The Government of India Bill proposed to form the Upper Chambers in the Provinces with a bicameral legislature as the constituencies for election to the Council of State, and in Provinces where there was no Upper House, it proposed to create *ad hoc* electoral colleges elected on a franchise similar to that adopted in the election of Upper Houses; which would elect the number of members allotted to that Province. It was passed in that form by the House of Commons, but when the Bill was in the House of Lords, the Government accepted a change in favour of direct elections to the Upper House, from territorial constituencies to be formed by Order in Council.

6. (1) No person shall be entitled to vote at an election to fill a Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan, as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an election to fill a general seat therein allotted to that Province.

(3) No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat in the Council of State.

(4) Subject as aforesaid, the qualifications entitling persons to vote in territorial constituencies at elections of members of the Council of State shall be such as may be prescribed.

7. Nothing in the two last preceding paragraphs shall apply in relation to British Baluchistan, and a person to fill the seat in the Council of State allotted to that Province shall be chosen in such manner as may be prescribed.

NOTES.

Para. 7.—It has always been known that the method of choosing the single representative for Baluchistan would, in the peculiar circumstances of that particular Province, present very considerable difficulties. No solution actually has yet been found, but it has been recognised from the start that there might be an alternative to nomination. This was made plain in the White Paper. Both the Joint Select Committee's report and the first Schedule of the Bill, left the method of selection of the representatives of all the Chief Commissioner's Provinces except where there is actually a Legislature, to be prescribed, since there was no obvious method of fitting the selection of a Chief Commissioner's Province representatives into a scheme where, for all other Provinces, election was by members of the Provincial Legislature. Accordingly in the Bill we had a free hand for all the Chief Commissioner's Provinces, except Coorg, including Baluchistan. Under the system of direct election now substituted no difficulty arises in any of the other Chief Commissioner's Provinces except Baluchistan, direct election in the territorial constituencies being practicable everywhere else, but it is necessary to keep a free hand for Baluchistan." (*Par Deb H.L., Vol. 98, cols 631-632*)

8. In any Province to which a seat to be filled by a representative of the scheduled castes is allotted, a person to fill that seat shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

The Rules regulating the conduct of elections by the European Electoral College shall be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

11. A person shall not be qualified to hold a seat in the Council of State unless—

(a) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province at an election of a member of the Council of State, or, in the case of a seat allotted to British Baluchistan, possesses such qualifications as may be prescribed;

(b) in the case of a seat allotted to the Anglo-Indian, the European or the Indian Christian community, he possesses such qualifications as may be prescribed.

12. Subject to the provisions of the four next succeeding paragraphs, the term of office of a member of the Council of State shall be nine years:

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office.

13. Upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of the provisions of this paragraph.

14. In the case of a Province specified in column one in division (ii) of the Table of Seats, the numbers specified as respects seats of different classes in columns two to six, in columns seven to eleven and in columns twelve to sixteen respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

15. The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for nine years; of the seven persons then chosen to fill the European seats, three shall be chosen to serve for three years only, one shall be chosen to serve for six years only and three shall be chosen to serve for nine years; and, of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for three years only and one shall be chosen to serve for nine years.

16. Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be chosen to serve for three years only, two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

The Federal Assembly.

17. The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

18. To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be allotted the number of seats specified in the second column opposite to that Province, and of those seats—

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes:

(ii) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent (a) the Sikh community; (b) the Muhammadan community; (c) the Anglo-Indian community; (d) the European community; (e) the Indian Christian community; (f) the interests of commerce and industry; (g) landholders; and (h) the interests of labour; and

(iii) the number specified in the thirteenth column shall be the number of seats reserved to women.

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

19. Subject to the provisions of the next succeeding paragraph, persons to fill the seats in the Federal Assembly allotted to a Governor's Province as general seats, Sikh seats or Muhammadan seats shall be chosen by electorates consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote:

Provided that in the North-West Frontier Province the holders of Sikh seats, and in any Province in which seats are reserved for representative of backward areas or backward tribes the holders of those seats, shall, for the purposes of this paragraph, be deemed to hold general seats.

NOTES.

Para. 19.—The White Paper 1933 differing in this respect from the recommendations of the Statutory Commission proposed in Para. 17 of the Introduction that the British Indian members of the Federal Assembly would be directly elected from communal territorial constituencies in the Provinces. The Council of State it was suggested should be composed of persons elected by members of the Provincial Legislatures by the method of the single transferable vote. The proposals were thus in accord with their other federal constitutions. Direct election to the electoral system obtaining in the Lower House, apart from the precedent furnished by other Federal Constitutions, had the unanimous support of Indian opinion, and was strongly pressed by the British India Delegation in their joint memorandum. Further both the Government of India, as well as the majority of the Provincial Governments supported the system of direct elections and urged its retention and continuance. The Joint Parliamentary Committee, by a majority decided against direct election, on the ground that with the increase in the size of the electorate, the system of direct election must breakdown, and stated that it would not be wise "to commit India at the outset of her constitutional development to a line which must prove to be a blind alley." They recommended indirect election as the only system under which the responsibility of a member to those who elected him would be real.

During the passage of the bill before the Select Committee of the House of Commons a strenuous fight was put up by the Labour and Liberal members in favour of direct elections to the Lower House.

Summarising his objections to direct elections *Mr. Isaac Foot* who led the opposition stated: "We are opposed to indirect election because it involves a reconstruction of the Upper Chamber at the centre, and gives it an authority and prestige which was never intended in the first instance. It deprives Indians of a right which they have enjoyed for the last 14 years, and is contrary to the whole principle of representative institutions. The argument for giving people the vote all along has been that by so doing you educate the electors. Why should it not be applied to India?"

"We are opposed to indirect election because it is contrary to the whole principle of federation. There is no federation in the world which is not constructed upon the principle of the Upper House representing the federating units and the Lower House representing the people at large. Further, it confuses provincial and federal issues. It will mean now that if Congress or some propagandist and extreme body wants to capture the centre, they must capture the Provinces, and you are going to bring into the Provinces issues and arguments which should never be there. Under this system you take away from the Governor-General the power of dissolution. If the Governor-General has to deal with the Provinces and the Provinces make an arrangement among themselves, and then one Province tries to bring pressure to bear in the interests of its Province, you may have the Governor-General having to stand up against these sectional interests". (*Par. Deb.*, Vol. 298, cols. 1999-2000.)

The Secretary of State, *Sir S. Hoare* stated that he did not consider the question of the method of election as one of principle and expressed himself in favour of the recommendations of the Joint Select Committee being given a trial, especially having regard to the machinery for amendment which had been enacted in S. 308. In spite of the opposition therefore the clause was passed.

20. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governors' Province for members of the scheduled castes:—

For the purposes of a general election of members of the Federal Assembly,—

(a) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes;

(b) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved; and

(c) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat.

Rules made under this Part of this Schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled.

21. For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an electoral college consisting of such women as are members of the Legislative Assembly of any Governors' Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the college.

Rules regulating the conduct of elections by the women's electoral college shall be such as to secure that, of the nine women's seats allotted to provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

22. For the purpose of choosing persons to fill the Anglo-Indian, European and Indian Christian seats in the Federal Assembly, there shall be for British India three electoral colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governors' Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college.

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian electoral college shall vote in accordance with the principle of proportional representation by means of the single transferable vote.

23. Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, land-holders and representatives of labour shall be chosen—

(a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed;

(b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed;

(c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies, and in accordance with such manner of voting as may be prescribed;

(d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated

Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed; and

(e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

24. Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen—

(a) in the case of Coorg, by the members of the Legislative Council; and

(b) in other cases in such manner as may be prescribed.

25. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

(i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province;

(ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

General.

26. (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say:—

“a European” means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India;

“an Anglo-Indian” means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India;

“an Indian Christian” means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;

“the scheduled castes” means such castes, races or tribes or parts of or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as “the depressed classes”, as His Majesty in Council may specify; and

“prescribed” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Federal Legislature or the Governor-General are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

(2) In this paragraph the expression “native of India” has the same meaning as it had for the purposes of section six of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only.

27. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the

Federal Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor-General, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this part of this Schedule and for securing the due constitution of the Council of State and the Federal Assembly and, in particular, but without prejudice to the generality of the foregoing words, with respect to—

(i) the notification of vacancies, including casual vacancies and the proceedings to be taken for filling vacancies;

(ii) the nomination of candidates;

(iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms, or are reserved for members of the scheduled castes;

(iv) the expenses of candidates at elections;

(v) corrupt practices and other offences at or in connection with elections;

(vi) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly; and

(vii) the manner in which rules are to be carried into effect.

TABLE OF SEATS.

The Council of State.

Representatives of British India.

(i) Allocation of seats

1 Province or Com- munity.	2 Total seats.	3 General seats.	4 Seats for Scheduled Castes.	5 Sikh seats.	6 Muham- madan seats.	7 Women's seats
Madras ..	20	14	1	—	4	1
Bombay ..	16	10	1	—	4	1
Bengal ..	20	8	1	—	10	1
United Provinces ..	20	11	1	—	7	1
Punjab ..	16	3	—	4	8	1
Bihar ..	16	10	1	—	4	1
Central Provinces and Berar ..	8	6	1	—	1	—
Assam ..	5	3	—	—	2	—
North-West Frontier Province ..	5	1	—	—	4	—
Orissa ..	5	4	—	—	1	—
Sind ..	5	2	—	—	3	—
British Baluchistan ..	1	—	—	—	1	—
Delhi ..	1	1	—	—	—	—
Ajmer-Merwara ..	1	1	—	—	—	—
Coorg ..	1	1	—	—	—	—
Anglo Indians ..	1	—	—	—	—	—
Europeans ..	7	—	—	—	—	—
Indian Christians ..	2	—	—	—	—	—
Totals ..	150	75	6	4	49	6

(ii) *Distribution of seats for purposes of triennial elections.*

1. Province,	Number of seats to be filled originally for three years only,					Number of seats to be filled originally for six years only,					Number of seats to be filled originally for nine years				
	2. General Seats.	3. Seats Schedu led for castes.	4. Sikh Seats.	5. Muhammadan Seats.	6. Women's Seats.	7. General Seats.	8. Seats Schedu led for castes.	9. Sikh Seats.	10. Muhammadan Seats.	11. Women's Seats.	12. General Seats.	13. Seats Schedu led for castes.	14. Sikh Seats.	15. Muhammadan Seats.	16. Women's Seats.
Madras ..	5	—	—	—	—	7	—	—	2	1	7	1	—	2	—
Bombay ..	4	1	—	2	1	—	—	—	—	—	—	—	—	—	—
Bengal ..	5	1	—	3	—	6	—	—	4	—	4	—	—	5	1
United Provinces. Punjab ..	2	1	2	4	1	5	1	2	2	1	—	—	—	—	—
Bihar ..	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—
Central Provinces and Berar ..	—	—	—	—	—	3	1	—	1	—	—	—	—	2	1
Assam ..	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
North-West Fron- tier Province ..	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Orissa ..	4	—	—	1	—	—	—	—	—	—	1	—	—	4	—
Sind ..	2	—	—	3	—	—	—	—	—	—	—	—	—	—	—
British Baluchis- tan ..	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—
Delhi ..	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Ajmer-Merwara ..	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Coorg ..	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Totals ..	22	2	2	18	2	28	2	2	15	2	25	2	—	16	2

TABLE OF SEATS.
The Federal Assembly.
Representatives of British India.

1	2	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
Province.	Total Seats.	General Seats:—		Sikh Seats	Muham- madan Seats.	Anglo- Indian Seats.	Euro- pean Seats.	Indian Chris- tian Seats.	Seats for re- presen- tatives of com- merce and in- dustry.	Land- holders Seats.	Seats for re- pre- sen- tatives of labour.	Women's Seats.
		Total of general Seats.	General seats reserved for Scheduled castes.									
Madras	37	19	4	—	8	1	1	2	2	1	1	2
Bombay	30	13	2	—	6	1	1	1	3	1	2	2
Bengal	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces	37	19	3	—	12	1	1	1	—	1	1	1
Punjab	30	6	1	6	14	—	1	1	—	1	1	1
Bihar	30	16	2	—	9	—	1	1	—	1	1	1
Central Provinces and Berar	15	9	2	—	3	—	—	—	—	1	1	1
Assam	10	4	1	—	3	—	1	1	—	—	—	—
North-West Frontier Province	5	1	—	—	4	—	—	—	—	—	—	—
Orissa	5	4	1	—	—	—	—	—	—	—	—	—
Sind	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan	5	1	—	—	1	—	—	—	—	—	—	—
Delhi	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—	—	—	—	—	—	—
Coorg	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats.	4	—	—	—	—	—	—	—	3	—	1	—
Totals ..	250	105	19	6	82	4	8	8	11	7	10	9

PART II.

REPRESENTATIVES OF INDIAN STATES.

1. The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

2. In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or to that group of States.

3. In the case of the Federal Assembly, there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table opposite to that State or to that group of States.

4. A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he—

(i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(ii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age:

Provided that—

(a) the Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that sub-paragraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and

(b) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

5. Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

6. Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States and groups of States comprised in Divisions XVI and XVII of the Table of Seats,—

(i) the Rulers of States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and

(ii) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat:

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be—

(i) in the case of a person appointed to fill a seat in the Council of State—

(a) by the Ruler of a State entitled to separate representation, nine years;

(b) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years;

(c) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;

(d) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever may be the shorter period;

(e) in any other manner, three years; and

(ii) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly:

Provided that—

(i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed;

(ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

(a) in the case of the Rulers of Panna and of Mayurbhanj, for two years; and

(b) in the case of the Ruler of Pudukottai, for three years.

9. Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed:

Provided that in choosing a person to be so appointed the Ruler of a State mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one half of those States have so acceded but, subject as hereinafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appoint persons, not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber:

Provided that the right to appoint such additional members shall not be exercised after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

11. Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation:

Provided that—

(a) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled; and

(b) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled; and

(c) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats:—

(a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty-five, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion;

(b) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups;

(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly:

Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled;

(e) seats in the Federal Assembly or Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

13. His Majesty in Council may by order vary the Table of Seats by transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do—

(a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled; or

(b) with a view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of in rotation, and is satisfied that such variation will not adversely affect the rights and interest of any State:

Provided that a State mentioned in paragraph eight of this Part of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine.

Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied.

14. In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to—

(a) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect;

(b) the filling of casual vacancies in seats;

(c) the decision of doubts or disputes arising out of or in connection with any appointment; and

(d) the manner in which the rules are to be carried into effect.

In this Part of this Schedule the expression "prescribed" means prescribed by His Majesty in Council or by rules made under this paragraph.

15. For the purposes of sub-section (2) of section five of this Act—

(i) if the Rulers of at least one-half of the States included in any group to which one seat in the Council of State is allotted accede to the Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State;

(ii) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

(iii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seats or, if it is one of the States comprised in the said Division XVII of the Table, such figure as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

TABLE OF SEATS.
The Council of State and the Federal Assembly.
Representatives of Indian States.

1. States and Groups of States.	2. Number of seats in Council of State	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Popula- tion.
DIVISION I.				
Hyderabad ..	5	Hyderabad ..	16	14,436,148
DIVISION II.				
Mysore ..	3	Mysore ..	7	6,557,302
DIVISION III.				
Kashmir ..	3	Kashmir ..	4	3,646,243
DIVISION IV.				
Gwalior ..	3	Gwalior ..	4	3,523,070
DIVISION V.				
Baroda ..	3	Baroda ..	3	2,443,007
DIVISION VI.				
Kalat ..	2	Kalat ..	1	342,101
DIVISION VII.				
Sikkim ..	1	Sikkim ..	—	109,808
DIVISION VIII.				
1. Rampur ..	1	1. Rampur ..	1	465,225
2. Benares ..	1	2. Benares ..	1	391,272
DIVISION IX.				
1. Travancore ..	2	1. Travancore ..	5	5,095,973
2. Cochin ..	2	2. Cochin ..	1	1,205,016
3. Pudukkottai ..	1	3. Pudukkottai ..	1	400,694
Banganapalle ..		Banganapalle ..		39,218
Sandur ..		Sandur ..		13,583
DIVISION X.				
1. Udaipur ..	2	1. Udaipur ..	2	1,566,910
2. Jaipur ..	2	2. Jaipur ..	3	2,631,775
3. Jodhpur ..	2	3. Jodhpur ..	2	2,125,982
4. Bikaner ..	2	4. Bikaner ..	1	936,218
5. Alwar ..	1	5. Alwar ..	1	749,751
6. Kotah ..	1	6. Kotah ..	1	685,804
7. Bharatpur ..	1	7. Bharatpur ..	1	486,954
8. Tonk ..	1	8. Tonk ..	1	317,360

SCHEDULE I.

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1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Popula- tion.
9. Dholpur ..	1	9. Dholpur ..	1	254,986
10. Karauli ..	1	10. Karauli ..	1	140,525
11. Bundi ..	1	11. Bundi ..	1	216,722
12. Sirohi ..	1	12. Sirohi ..	1	216,528
13. Dungarpur ..	1	13. Dungarpur ..	1	227,544
14. Banswara ..	1	14. Banswara ..	1	260,670
15. Partabgarh ..	1	15. Partabgarh ..	1	76,539
16. Jhalawar ..	1	16. Jhalawar ..	1	107,890
17. Jaisalmer ..	1	17. Jaisalmer ..	1	76,255
18. Kishengarh ..	1	18. Kishengarh ..	1	85,744
DIVISION XI.				
1. Indore ..	2	1. Indore ..	2	1,325,089
2. Bhopal ..	2	2. Bhopal ..	2	729,955
3. Rewa ..	2	3. Rewa ..	2	1,587,445
4. Datia ..	1	4. Datia ..	1	158,834
5. Orchha ..	1	5. Orchha ..	1	314,661
6. Dhar ..	1	6. Dhar ..	1	243,430
7. Dewas (Senior) ..	1	7. Dewas (Senior) ..	1	83,321
8. Dewas (Junior) ..	1	8. Dewas (Junior) ..	1	70,513
9. Jaora ..	1	9. Jaora ..	1	100,166
10. Ratlam ..	1	10. Ratlam ..	1	107,321
11. Panna ..	1	11. Panna ..	1	212,130
12. Samthar ..	1	12. Samthar ..	1	33,307
13. Ajaigarh ..	1	13. Ajaigarh ..	1	85,895
14. Bijawar ..	1	14. Bijawar ..	1	115,851
15. Charkhari ..	1	15. Charkhari ..	1	120,352
16. Chhatarpur ..	1	16. Chhatarpur ..	1	161,267
17. Baoni ..	1	17. Baoni ..	1	19,132
18. Nagod ..	1	18. Nagod ..	1	74,589
19. Maihar ..	1	19. Maihar ..	1	68,991
20. Baraundha ..	1	20. Baraundha ..	1	16,071
21. Barwani ..	1	21. Barwani ..	1	141,110
22. Ali Rajpur ..	1	22. Ali Rajpur ..	1	101,963
23. Shahpura ..	1	23. Shahpura ..	1	54,233
24. Jhabua ..	1	24. Jhabua ..	1	145,522
25. Sailana ..	1	25. Sailana ..	1	35,223
26. Sitamau ..	1	26. Sitamau ..	1	28,422
27. Rajgarh ..	1	27. Rajgarh ..	1	134,891
28. Narsingarh ..	1	28. Narsingarh ..	1	113,873
29. Khilchipur ..	1	29. Khilchipur ..	1	45,583
DIVISION XII.				
1. Cutch ..	1	1. Cutch ..	1	514,307
2. Idar ..	1	2. Idar ..	1	262,660
3. Nawanagar ..	1	3. Nawanagar ..	1	409,192
4. Bhavnagar ..	1	4. Bhavnagar ..	1	500,274
5. Junagadh ..	1	5. Junagadh ..	1	545,152
6. Rajpipla ..	1	6. Rajpipla ..	1	206,114
7. Palanpur ..	1	7. Palanpur ..	1	264,179
8. Dhrangadhra ..	1	8. Dhrangadhra ..	1	88,961
9. Gondal ..	1	9. Gondal ..	1	205,846
10. Porbandar ..	1	10. Porbandar ..	1	115,673
11. Morvi ..	1	11. Morvi ..	1	113,023

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4 Number of seats in the Federal Assembly.	5. Popula- tion.
9. Radhanpur ..	1	9. Radhanpur ..	1	70,530
Wankaner ..		Wankaner ..		44,259
Palitana ..		Palitana ..		62,150
10. Cambay ..	1	10. Cambay ..	1	87,761
Dharampur ..		Dharampur ..		112,031
Balasinor ..		Balasinor ..		52,525
11. Baria ..	1	11. Baria ..	1	159,429
Chhota Udepur ..		Chhota Udepur ..		144,640
Sant ..		Sant ..		83,531
Lunawada ..	1	Lunawada ..	1	95,162
12. Bansda ..		12. Bansda ..		48,830
Sachin ..		Sachin ..		22,107
Jawhar ..	1	Jawhar ..	1	57,261
Danta ..		Danta ..		26,196
13. Dhrol ..		Dhrol ..		27,639
Limbdi ..	1	Limbdi ..	1	40,088
Wadhwan ..		Wadhwan ..		42,602
Rajkot ..		Rajkot ..		75,540
DIVISION XIII.				
1. Kolhapur ..	2	1. Kolhapur ..	1	957,137
2. Sangli ..	1	2. Sangli ..	1	258,442
Savantvadi ..		Savantvadi ..		230,589
3. Janjira ..	1	3. Janjira ..	1	110,375
Mudhol ..		Mudhol ..		62,832
Bhor ..		Bhor ..		141,546
4. Jamkhandi ..	1	4. Jamkhandi ..	1	114,270
Miraj (Senior) ..		Miraj (Senior) ..		93,938
Miraj (Junior) ..		Miraj (Junior) ..		40,684
Kurundwad (Senior) ..		Kurundwad (Senior) ..		44,204
Kurundwad (Junior) ..	1	Kurundwad (Junior) ..	1	39,584
5. Akalkot ..		5. Akalkot ..		92,604
Phaltan ..		Phaltan ..		58,761
Jath ..		Jath ..		91,094
Aundh ..		Aundh ..		76,504
Ramdurg ..		Ramdurg ..		35,454
DIVISION XIV.				
1. Patiala ..	2	1. Patiala ..	2	1,625,521
2. Bahawalpur ..	2	2. Bahawalpur ..	1	984,614
3. Khairpur ..	1	3. Khairpur ..	1	227,184
4. Kapurthala ..	1	4. Kapurthala ..	1	316,754
5. Jind ..	1	5. Jind ..	1	324,674
6. Nabha ..	1	6. Nabha ..	1	287,574
7. Tehri-Garhwal ..	1	7. Tehri-Garhwal ..	1	349,574
Mandi ..		Mandi ..		207,464
Bilaspur ..		Bilaspur ..		100,994
8. Sirmur ..	1	9. Sirmur ..	1	58,404
Chamba ..		Chamba ..		148,564
9. Faridkot ..		Faridkot ..		146,874
Malerkotla ..	1	10. Malerkotla ..	1	164,364
Loharu ..		Loharu ..		83,074
				23,331

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Popula- tion.
DIVISION XV				
1. Cooch Behar ..	1	1. Cooch Behar ..	1	590,886
2. Tripura ..	1	2. Tripura ..	1	382,450
Manipur ..		3. Manipur ..	1	445,606
DIVISION XVI.				
1. Mayurbhanj ..	1	1. Mayurbhanj ..	1	889,603
Sonepur ..		2. Sonepur ..	1	237,920
2. Patna ..	1	3. Patna ..	1	566,924
Kalahandi ..		4. Kalahandi ..	1	513,716
3. Keonjhar ..	1	5. Keonjhar ..	1	460,609
Dhenkanal ..		6. Gangpur ..	1	356,674
Nayagarh ..	1	7. Bastar ..	1	524,721
Talcher ..		8. Surguja ..	1	501,939
Nilgiri ..	1	9. Dhenkanal ..	3	284,326
4. Gangpur ..		Nayagarh ..		142,406
Bamra ..	1	Seraikela ..	3	143,525
Seraikela ..		Baud ..		135,248
Baud ..	1	Talcher ..		69,702
Bonai ..		Bonai ..	80,186	
5. Bastar ..	1	Nilgiri ..	3	68,594
Surguja ..		Bamra ..		151,047
Raigarh ..	1	10. Raigarh ..	3	277,569
Nandgaon ..		Khairagarh ..		157,400
6. Khairagarh ..	1	Jashpur ..	3	193,698
Jashpur ..		Kanker ..		136,101
Kanker ..	1	Sarangarh ..	3	128,967
Korea ..		Korea ..		90,886
Sarangarh ..	1	Nandgaon ..		182,380
DIVISION XVII.				
States not mentioned in any of the preceding Divisions, but describ- ed in paragraph 12 of this Part of this Sched- ule.	2	States not mentioned in any of the preceding Divisions, but describ- ed in paragraph 12 of this Part of this Schedule.	5	3,032,197

Total population of the States in this Table : 78,981,912

SECOND SCHEDULE.

[S. 6.]

Provisions of this Act which may be amended without affecting the Accession of a State.

Part I.
Part II, chapter II.

in so far as it relates to the Commander-in-Chief,
save with respect to the exercise by the Governor-
General on behalf of His Majesty of the exe-

outive authority of the Federation, and the definition of the functions of the Governor-General; the executive authority of the Federation; the functions of the council of ministers, and the choosing and summoning of ministers and their tenure of office; the power of the Governor-General to decide whether he is entitled to act in his discretion or exercise his individual judgment; the functions of the Governor-General with respect to external affairs and defence; the special responsibilities of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's Instrument of Instructions to the Governor-General; the superintendence of the Secretary of State; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.

Part II, chapter III, save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen; the disqualifications for membership of a Chamber of the Federal Legislature in relation to the representatives of the States; the procedure for the introduction and passing of Bills; joint sittings of the two Chambers; the assent to Bills, or the withholding assent from Bills, by the Governor-General; the reservation of Bills for the signification of His Majesty's pleasure; the annual financial statement; the charging on the revenues of the Federation of the salaries allowances and pensions payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and

- demands for grants; supplementary financial statements; the making of rules by the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.
- „ chapter IV, save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.
- Part III, chapter I. The whole chapter.
- „ chapter II, save with respect to the special responsibilities of the Governor relating to the rights of Indian States and the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the superintendence of the Governor-General in relation to those responsibilities.
- Part III, chapter III, save with respect to the making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of Judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.
- „ chapter IV. The whole chapter.
- „ chapter V. „
- „ chapter VI. „
- Part IV. The whole Part.
- Part V, chapter I, save with respect to the power of the Federal Legislature to make laws for a State; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.

- Part V, chapter II, save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.
- „ chapter III. The whole chapter.
- Part VI, save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof.
- Part VII, chapter I, in so far as it relates to Burma.
- „ chapter II, save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General.
- „ chapter III, save in so far as it affects suits against the Federation by a Federated State.
- Part VIII, save with respect to the constitution and functions of the Federal Railway Authority; the conduct of business between the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.
- Part IX, chapter I, in so far as it relates to appeals to the Federal Court from High Courts in British India; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act.
- „ chapter II. The whole chapter.
- Part X, save with respect to the eligibility of Rulers and subjects of Federated States for civil Federal office.
- Part XI. The whole Part.
- Part XII, save with respect to the saving for rights and obligations of the Crown in its relations with Indian States; the use of His Majesty's forces in connection with the discharge of the functions of the Crown in its said relations; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws; His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal Legislature or any

	Provincial Legislature recommending amendments of this Act or Orders in Council made thereunder; and save also the provisions relating to the interpretation of this Act so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.
Part XIII.	The whole part.
First Schedule.	The whole Schedule, except Part II thereof.
Third Schedule.	The whole Schedule.
Fourth Schedule.	save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.
Fifth Schedule.	The whole Schedule.
Sixth Schedule.	" "
Seventh Schedule.	Any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State.
Eighth Schedule.	The whole Schedule.
Ninth Schedule.	"
Tenth Schedule.	"

NOTES.

The second schedule so to speak holds the key to the future progress of India along the lines of complete responsibility. As already noticed by the terms of S. 6 (5) every Instrument of Accession executed by the Ruler of an Indian State acceding to the Federation has to contain a covenant that the provisions of the Act mentioned in this schedule may be amended by or by authority of Parliament without affecting the accession of the State. In its positive aspect such a term enables Parliament to amend the Act to the extent permitted by this Schedule and negatively it forbids any change in the prohibited area on pain of secession by the State or States who do not consent to the change. The effect of the section as operating as a quasi legal fetter on Parliament so long as it desires to retain the dissenting States within the fold of the Indian Federation has already been discussed in the notes to S. 110, *ante*.

Analysed, the provisions of the Schedule fall into two broad categories.

1. Changes in the Provinces.
2. Changes at the Centre.

So far as the Provinces are concerned the Indian States have no say in the matter and there is no legal impediment in the conferment of complete autonomy by the removal of all legal restrictions on the powers of the Provincial Legislatures and Governments, in respect of the matters which are under this Act assigned to the Provinces, and to matters in the other legislative lists, not so assigned, except as to any subject which has been accepted by the States as a subject on which the Federal Legislature may make laws for the State.

Accordingly the whole of Part III except those provisions dealing with the matters relating to the states is subject to alteration without the consent of the States.

2. Except the special responsibilities for minorities and for the services and for the prevention of discrimination against United Kingdom subjects, the other special responsibilities cannot be altered or amended, nor can the departments of defence or external affairs be transferred to ministerial control without the consent of the Princes. Similarly the rest of Part II and generally all the powers of the Governor-General in his individual judgment and in his discretion, *i.e.*, those matters on which the ultimate control vests in Parliament are also immune from change. The constitution and functions of the Federal organs—the Federal Court and the Federal Railway Authority are also protected. As regards the Legislature, its composition in relation to the States and the number of representatives of British India

and the States, its procedure, and the restrictions on its powers are all prohibited from amendment.

The advance of India to its "due place" in the Dominions is made dependent on the goodwill of the Rulers acceding to the Federation. The Constitution is thus made not merely 'rigid' but 'castiron'.

A legal provision for "secession" from the Federation in the event of an amendment of the powers of the Federal organs is a novelty introduced by this Act.

If an amendment of the Act were effected and it were contended that the "accession of a State" was affected thereby, who is the final authority to decide the question. It could not be the Federal Court, because the jurisdiction of the Court is dependent on the continuance of the 'Federal compact' embodied in the Instrument of Accession, and after the lapse of the contract by reason of the happening of the event provided for, the power of the Federal Court cannot survive.

Possibly the State would be the ultimate judge of the matter.

.. THIRD SCHEDULE.

[Ss. 7, 48.]

PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

1. There shall be paid to the Governor-General and to the Governors of the Provinces the following annual salaries, that is to say:—

The Governor-General	..	250,800	rupees
The Governor of Madras	..	120,000	rupees
The Governor of Bombay	..		
The Governor of Bengal	..		
The Governor of the United Provinces	..	100,000	rupees
The Governor of the Punjab	..		
The Governor of Bihar	..		
The Governor of the Central Provinces and Berar	..	72,000	rupees
The Governor of Assam	..	66,000	rupees
The Governor of the North West Frontier Province	..		
The Governor of Orissa	..		
The Governor of Sind.	..		

2. There shall be paid to the Governor-General and to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time to time be fixed by His Majesty in Council, and such provision shall be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council.

3. While the Governor-General or a Governor is absent on leave, he shall in lieu of his salary be entitled to such leave allowance as may be fixed by His Majesty in Council.

4. There shall be granted to and in respect of the Governor-General and the Governor of every Province such customs privileges as may be specified by Order in Council.

5. While any person appointed by His Majesty to act as Governor-General or as a Governor is so acting, he shall be entitled to the same salary and, save as may be otherwise provided by His Majesty in Council, the same allowances and privileges as the Governor-General or that Governor.

6. Any sums required to give effect to the provisions of this Schedule shall, in the case of the Governor-General or a person acting as such, be paid out of and charged on the revenues of the Federation and, in the case of a Governor or a person acting as such, be paid out of and charged on the revenues of the Province.

NOTES.

The practice in this matter, as regards His Majesty's representatives, is not the same in various parts of the Empire. There are Colonies where the Governor is exempt, and Colonies where he is not exempt. In his capacity as a representative of His Majesty he should be free to import any goods he wishes to import free of Customs Duty. (*Parl. Deb. Vol. 301. col. 991*).

FOURTH SCHEDULE.

[Ss. 24, 67, 200 & 220.]

FORMS OF OATHS OR AFFIRMATIONS.

1. Form of oath or affirmation to be taken or made by a member of a Legislature who is a British subject:—

"I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

2. Form of oath or affirmation to be taken or made by a member of a Legislature who is the Ruler of an Indian State:—

"I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance in my capacity as member of this Council [*or Assembly*] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

3. Form of oath or affirmation to be taken, or made by a member of a Legislature who is a subject of the Ruler of an Indian State:—

"I, A.B., having been elected [*or nominated or appointed*] a member of this Council [*or Assembly*], do solemnly swear [*or affirm*] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my capacity as Member of this Council [*or Assembly*] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

4. Form of judicial oath or affirmation to be taken or made by a British subject:—

"I, A.B., having been appointed Chief Justice [*or a judge*] of the Court do solemnly swear [*or affirm*] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

5. Form of judicial oath or affirmation to be taken or made by a subject of the Ruler of an Indian State:—

"I, A.B., having been appointed Chief Justice [*or a judge*] of the Court do solemnly swear [*or affirm*] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my judicial capacity to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

FIFTH SCHEDULE.

[S. 61.]

COMPOSITION OF PROVINCIAL LEGISLATURES.

General Qualification for Membership.

1. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

(a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any Province, the Ruler or a subject of any prescribed Indian State; and

(b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age; and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

NOTES.

Para 1.—(a) "Or if it is so prescribed, etc". This brings the provisions of this schedule into line with the proviso to para. 1 of Sch. I, designed to provide the eligibility of Marwaris. The electoral rules under the previous Act rendered such persons eligible.

2. Upon the expiration of the term for which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

Legislative Assembly.

3. The allocation of seats in Provincial Legislative Assemblies shall be shown in the relevant Table of Seats appended to this Schedule.

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Marathas;

(ii) the numbers specified in the next ten columns shall be the numbers of seats to be filled by persons chosen to represent respectively—(a) backward areas and backward tribes; (b) the Sikh community; (c) the Muhammadan community; (d) the Anglo-Indian community, (e) the European community; (f) the Indian Christian community; (g) interests of commerce, industry, mining and planting; (h) land-holders, (i) universities; and (j) the interests of labour; and

(iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh seats, Muhammadan seats, Anglo-Indian seats or Indian Christian seats) reserved for women.

In the Punjab one of the land-holders' seats shall be a seat to be filled by a Tumandar.

NOTES.

Para. 4.—This gives effect to separate electorates and the communal award in regard to the proportion of the allocation of seats among the various communities.

5. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(i) for the election of persons to fill the general seats;

(ii) for the election of persons to fill the Sikh seats, if any;

(iii) for the election of persons to fill the Muhammadan seats;

- (iv) for the election of persons to fill the Anglo-Indian seats, if any;
 - (v) for the election of persons to fill the European seats, if any; and
 - (vi) except in the case of Bihar, for the election of persons to fill the Indian Christian seats, if any,
- or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

NOTES.

Para. 5.—“*Bihar*” A considerable proportion of the Indian Christians of Bihar belong to the aboriginal tribes. The exception has been provided to enable arrangements being made for the seat being filled by indirect election. Accordingly para. (4), Government of India (Provincial Legislative Assemblies) Order, 1936, relative to Bihar provides for a special electoral college of 80 persons.

6. The required number of general seats to be reserved for members of the scheduled castes, and in the Province of Bombay for Marathas, shall be reserved by reserving for members of those castes or, as the case may be, for Marathas one or more seats in each of so many of the general territorial constituencies as may be necessary, so, however, that in each such constituency there shall be at least one unreserved.

7. In a province in which any general seats are reserved for members of the scheduled castes, all members of those castes who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved, and no member of those castes not elected as a candidate at such an election shall be qualified to hold—

(a) a seat so reserved in that constituency;

(b) if it is so prescribed as respects that Province, any seat in that constituency.

In relation to bye-elections this paragraph shall have effect with such adaptations and modifications as may be prescribed.

NOTES.

Para. 7.—This para. gives effect to the Poona Pact.

8. The persons to fill the seats specified in columns fifteen to nineteen of the Table of Seats as seats to be filled by women shall be chosen in territorial constituencies, which shall be either—

(a) constituencies formed under paragraph five of this Schedule; or

(b) constituencies specially formed for the purpose of electing women members.

9. The provisions of the Sixth Schedule to this Act shall have effect with respect to the persons who are entitled to vote at elections in the territorial constituencies mentioned in paragraphs five and eight of this Schedule.

10. In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats, and in Bihar the person to fill the Indian Christian seat, shall be chosen in such manner as may be prescribed:

Provided that in a Province in which any seats are to be filled by representatives of backward areas or backward tribes some or all of those seats may, if it is so prescribed, be treated in the prescribed manner as additional general seats to be reserved for representatives of such areas or tribes.

11. In the Punjab the landholder's seat to be filled by a Tumandar shall be assigned to such constituency as may be prescribed.

12. A person ¹[shall not be qualified to be chosen to fill a seat] in the Legislative Assembly of a Province unless—

(a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed; and

(b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

Legislative Councils.

13. The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this Schedule.

14. In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

(a) the number specified in the third column shall be general seats;

(b) the numbers specified in the fourth, fifth and sixth columns shall be seats to be filled by persons chosen to represent respectively the Muhammadan community, the European community and the Indian Christian community;

(c) the number specified in the seventh column shall be seats to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote; and

(d) the number specified in the eighth column shall be seats to be filled by persons chosen by the Governor in his discretion.

15. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(i) for the purpose of electing persons to fill the general seats;

(ii) for the purpose of electing persons to fill the Muhammadan seats.

(iii) for the purpose of electing persons to fill the European seats;

(iv) for the purpose of electing persons to fill the Indian Christian seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

16. At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency, a European constituency, or an Indian Christian constituency shall not be entitled to vote.

In the case of a Muhammadan constituency, a European constituency, or an Indian Christian constituency no person shall be entitled to vote who

1. The words within brackets have been substituted for the words "shall not be qualified to hold a seat" by para. 1 of the 1st. Schedule to the Government of India (Pro. Leg. Assemblies) Order, 1936.

is not, as the case may be, a Muhammadan, a European, or an Indian Christian.

17. The qualifications entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, shall be such as may be prescribed.

18. The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor in his discretion shall make by order such provision as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

General.

19. In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say,—

“a European,” “an Anglo-Indian,” “an Indian Christian” and “the scheduled castes” have the same meaning respectively as they have in Part I of the First Schedule to this Act;

“backward areas” and “backward tribes” mean respectively such areas and tribes as His Majesty in Council may from time to time declare to be areas and tribes to which a special system of representation is more appropriate; and

“prescribed” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

20. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Provincial Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this Schedule and the provisions of the Sixth Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

(i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies;

(ii) the nomination of candidates;

(iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of landholder;

(iv) the expenses of candidates at elections;

(v) corrupt practices and other offences at or in connection with elections;

(vi) the decision of doubts and disputes arising out of or in connection with elections; and

(vii) the manner in which the rules are to be carried into effect.

TABLE OF SEATS.
Provincial Legislative Assemblies.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
Province.	Total Seats.	General Seats.		Seats for representation of backward areas and tribes.	Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats.	Seats for representation of commerce, industry, mining and planting.	Landholders Seats.	University Seats.	Seats for representation of labour.	Seats for Women.				Indian Christian.
		Total of General Seats.	General Seats reserved for Scheduled Castes.											General.	Sikh.	Muhammadan.	Anglo-Indian.	
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	—	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	5	2	8	5	—	—	—	—
Bengal	250	178	30	—	—	117	3	11	3	19	5	1	3	2	—	—	1	—
United Provinces	228	140	20	—	—	64	1	2	2	3	5	1	3	4	—	—	—	—
Punjab	175	42	8	—	31	84	1	1	2	1	5	1	3	2	—	—	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	1	1	—	—	—
Central Provinces and Berar.	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	3	34	—	1	1	11	2	—	4	1	—	—	—	—
North Western Frontier Province.	50	9	—	—	—	36	—	—	—	—	—	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	2	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	—	—	—

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar.

In Assam and Orissa the seats reserved for women shall be non-communal seats.

TABLE OF SEATS.—*Provincial Legislative Councils.*

1 Province.	2 Total of Seats.	3 General Seats.	4 Muhammadan Seats.	5 European Seats.	6 Indian Christian Seats.	7 Seats to be filled by Legislative Assembly.	8 Seats to be filled by Governor.
Madras ..	{Not less than 54 {Not more than 56	35	7	1	3	—	{Not less than 8 {Not more than 10
Bombay ..	{Not less than 29 {Not more than 30	20	5	1	—	—	{Not less than 3 {Not more than 4
Bengal ..	{Not less than 63 {Not more than 65	10	17	3	—	27	{Not less than 6 {Not more than 8
United Provinces.	{Not less than 58 {Not more than 60	34	17	1	—	—	{Not less than 6 {Not more than 8
Bihar ..	{Not less than 29 {Not more than 30	9	4	1	—	12	{Not less than 3 {Not more than 4
Assam ..	{Not less than 21 {Not more than 22	10	6	2	—	—	{Not less than 3 {Not more than 4

SIXTH SCHEDULE.

[SCHEDULE 5 (9)] PROVISIONS AS TO FRANCHISE.

PART I.

General.

1. There shall be an electoral roll for every territorial constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

2. The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Schedule referred to as "the prescribed date," as may be directed in each case by the Governor, exercising his individual judgment.

3. No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

(a) a British subject; to

(b) the Ruler or a subject of a Federated State; or

(c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

4. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent Court.

5. No person shall be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, a European constituency or an Indian Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian Christian, as the case may be.

6. No person who is or is entitled to be included in the electoral roll for any Sikh constituency, Muhammadan constituency, Anglo-Indian constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province ¹ * * * * *

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats.

7. No person shall in any Province vote at a general election in more than one territorial constituency, and in each Province such provisions, if any, as may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency in the Province:

Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this paragraph or in any such provisions shall prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed.

²[If a person votes in more than one constituency in contravention of this paragraph, his vote in each of the constituencies shall be void.]

8. No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency if he is for the time being dis-

1. The words "or vote at any election to fill a general seat therein" were omitted by para. 2 of the 1st Sch. to the Government of India (Prov. Leg. Assemblies) Order, 1936.

2. Inserted by para. 3, *ibid.*

qualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included.

9. No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude, or imprisonment.

10. The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands—

(a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, notwithstanding anything in the subsequent provisions of this Schedule, continue to be on the roll for that constituency unless she remarries or becomes disqualified under the foregoing provisions of this Schedule for inclusion in that roll;

(b) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner:

Provided that, if a woman who is entitled by virtue of sub-paragraph (a) of this paragraph to remain on the roll of a territorial constituency changes her place of residence, then, if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

11. For the purposes of this Schedule any property owned, held, or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Schedule, be left out of account.

12. This Schedule shall have effect as if any reference therein to an officer, non-commissioned officer, or soldier of His Majesty's regular military forces included a reference to an officer or man of any British India police force, not being an officer or man who has been dismissed or discharged from that force for disciplinary reasons, and a reference to an officer, non-commissioned officer or soldier of the Auxiliary Force (India) or the Indian Territorial Force, not being an officer, non-commissioned officer or soldier who has been dismissed or discharged from the force for disciplinary reasons, or has served in the force for less than four years.

13. (1) In this Schedule, except where the context otherwise requires "territorial constituency" means one of the territorial constituencies mentioned in paragraphs five and eight of the Fifth Schedule to this Act.

"European," "Anglo-Indian," "Indian Christian" and "scheduled castes" have the same meanings respectively as they have in Part I of the First Schedule to this Act;

"Indian Christian constituency" does not include any constituency which may be formed for choosing persons to fill the Indian Christian seat in Bihar;

"person" does not include a body of persons;

"prescribed," except in the phrase "the prescribed date," has the same meaning as in the Fifth Schedule to this Act:

"previous financial year," "previous Bengali year" and "previous fasli year" mean, respectively, the financial year, the Bengali year, and the fasli year immediately preceding that in which the prescribed date falls:

"house" and "building" include, respectively, a part of a house or building separately occupied as a dwelling or for the purposes of any trade, business, or profession;

"literate" means, in relation to any person, able to read and write in some language or dialect selected by him, being a language or dialect in common use in some part of India:

"cantonnement" means a cantonment for the purposes of the Cantonments Act, 1924, and "cantonment record" means a record prepared under that Act.

(2) Any reference in this Schedule to "urban constituencies" or "rural constituencies" shall be construed as a reference to such territorial constituencies as may be classified as urban or rural constituencies, respectively, by an Order in Council delimiting territorial constituencies:

Provided that any such Order in Council may direct that any Anglo-Indian constituency, European constituency, or Indian Christian constituency shall be deemed to be an urban constituency for some purposes and a rural constituency for other purposes.

(3) Any reference in this Schedule to persons assessed to income-tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income-tax in that year if his share of the firm's income on which income-tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable

(4) If any question arises under this Schedule whether any person is or is not a Sikh, he shall be deemed to be a Sikh if and only if he makes in the prescribed manner a declaration in the prescribed form that he is a Sikh.

(5) Any reference in this Schedule to a retired, pensioned or discharged officer, non-commissioned officer or soldier of any force shall be deemed not to include a reference to any person who has been dismissed or discharged from that force for disciplinary reasons.

(6) Any reference in this Schedule to all or any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted.

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PART II.

MADRAS.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not less than one hundred and twenty days in the previous financial year.

1. Paragraph 7 was omitted by paragraph 22 of Part I of the Government of India (Provincial Legislative Assemblies) Order, 1936.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he—

(a) paid tax under the Madras Motor Vehicles Taxation Act, 1931, for the whole of that year; or

(b) paid for both the half years of that year to a municipality, local board or cantonment authority in the Province profession tax under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Cantonments Act, 1924; or

(c) paid for both the half years of that year to a municipality or cantonment authority in the Province property tax under any of the said Acts; or

(d) paid for both the half years of that year house-tax under the Madras Local Boards Act, 1920; or

(e) occupied as sole tenant throughout that year a house in respect of which property tax or house tax has been paid for both the half years of that year under any of the Acts mentioned in this paragraph; or

(f) was assessed to income-tax.

Qualifications dependent on property, etc.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) was on the last day of the previous fasli year a registered landholder, inamdar, ryotwari pattadar or occupancy ryot under the Madras Estates Land Act, 1908; or

(b) was in and for the previous fasli year assessed to ground rent payable to the Government of the Province; or

(c) was throughout the previous fasli year a kanamdar or kuzhi-kanamdar or the holder of a kudiyiruppu or a verumpattamdar having fixity of tenure, each of these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929; or

(d) was throughout the previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value, in the case of an urban constituency, of not less than one hundred rupees, and, in the case of a rural constituency, of not less than fifty rupees.

4. (1) Sub-paragraph (a) of the last preceding paragraph shall not apply in relation to registered joint landholders, registered joint inamdars, registered joint ryotwari pattadars, or registered joint occupancy ryots, but in relation to such persons (being persons so registered on the last day of the previous fasli year) the following provisions of this paragraph shall have effect.

(2) Where the joint holding of any joint landholders or joint holders of a whole-inam village is of an annual rental of one thousand rupees or upwards, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one registered joint

holder for every complete five hundred rupees of the annual rental of the joint holding shall be qualified to be included in the electoral roll of the appropriate territorial constituency.

(3) Where the annual assessment, rent or kist of the joint holding of joint holders of a minor inam, a ryotwari patta or an estate patta is one hundred rupees or upwards, then, subject as aforesaid, one registered joint holder for every complete fifty rupees of the annual assessment, rent or kist shall be qualified to be included in the electoral roll of the appropriate territorial constituency.

(4) In other cases, one of the registered joint holders shall, subject as aforesaid, be qualified to be included in the electoral roll of the appropriate territorial constituency.

(5) The registered holders to be included under this paragraph in an electoral roll in respect of a joint holding shall be those nominated in an application in that behalf, signed by a majority of the registered joint holders.

Qualification by reason of guardianship.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is on the prescribed date the guardian of a minor who by virtue of the foregoing provisions of this Part of this Schedule would have been entitled to be included in the electoral roll for that constituency if he were of full age and satisfied the requirements of paragraph one of this Part of this Schedule.

Qualification by reason of literacy.

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to be literate.

Qualification by reason of service in His Majesty's forces.

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualifications for women.

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer, or soldier of His Majesty's regular military forces; or

(b) if her husband possesses the qualifications requisite for the purpose of this paragraph.

9. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

(a) was assessed in the previous financial year to income-tax; or

(b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(c) occupied for not less than six months in the previous financial year a house in the city of Madras the annual value whereof was not less than sixty rupees, not being a house in any military or police lines; or

(d) was assessed in the Province in the previous financial year to tax on companies; or

(e) was assessed in the Province in the previous financial year to an aggregate amount of not less than three rupees in respect of either or both of the following taxes, namely, property tax or profession tax; or

(f) ¹[was on the last day of the previous fasli year registered] is registered as a ryotwari pattadar or an inamdar of land the annual rent value whereof is not less than ten rupees; or

(g) ²[held throughout the previous fasli year] under a ryotwari pattadar or an inamdar a registered lease of land the annual rent value whereof is not less than ten rupees; or

(h) ³[was on the last day of the previous fasli year registered] jointly with the proprietor under section fourteen of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent value whereof is not less than ten rupees; or

(i) ⁴[was on the last day of the previous fasli year a registered landholder] holding an estate the annual rent value whereof is not less than ten rupees; or

(j) ⁴[held on the last day of the previous fasli year] as ryot, or as tenant under a landholder, land the annual rent value whereof is not less than ten rupees.

⁵[*Special qualification for Scheduled Castes.*]

9-A. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person who is a member of the scheduled castes shall be qualified to be included in the electoral roll for any territorial constituency if throughout the previous fasli year he occupied as owner or lessee a house in a municipality, a cantonment or an area subject to the jurisdiction of a local board, with an annual rent value of not less than eighteen rupees, or a house elsewhere with an annual rent value of not less than twelve rupees.]

Application necessary for enrolment in certain cases.

⁶[10. No person shall, by virtue of sub-paragraph (e) of paragraph two, sub-paragraph (c) or sub-paragraph (d) of paragraph three, paragraph five or paragraph six of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged officer, non-commissioned officer or soldier, be included in the electoral roll for any territorial constituency, unless application is made in the prescribed manner by, or, if it is so prescribed, on behalf of, that person, that that person should be so included.

General provisions as to joint property, etc.

11. (1) Subject to the provisions of this paragraph, property held and payments made jointly by, and assessments made jointly on, more than one person, shall be left out of account for the purposes of this Part of this Schedule.

1. The words in brackets were substituted for the words "is registered" by para 9 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936.

2. The words in brackets were substituted for the word "holds" by *Ibid.*

3. The words in brackets were substituted for the words "is a landholder" by *Ibid.*

4. The words in brackets were substituted for the word "holds" by, *Ibid.*

5. Inserted by paragraph 8 of Part II, *Ibid.*

6. Substituted by paragraph 7 of Part II, *Ibid.*

(2) Where any such property, payments or assessments would qualify a person if they had been held or made by or made on, him solely, then, subject to the provisions of Part I of this Schedule and to any over-riding provisions of this Part of this Schedule, one of those persons shall be qualified in respect of the property, payment or assessment and that person shall be—

(a) if the property is held, or the payments or assessments made, by or on a Hindu joint family, the manager thereof;

(b) if the property is held or the payments or assessments made by or on any other joint family, the member thereof authorised in that behalf by the family themselves;

(c) in any other case, the person authorised in that behalf by a majority of the persons by or on whom the property is held or the payments or assessments made.

(3) Nothing in this paragraph affects paragraph four of this Part of this Schedule, or the provisions of Part I of this Schedule relating to partners in firms assessed to income-tax.

Interpretation, etc.

12 (1) In this Schedule, in relation to Madras—

“estate” means an estate as defined in the Madras Estates Land Act, 1908;

“fasli year” means a year ending on the thirtieth day of June;

“landholder” means a person owning an estate or part of an estate and includes every person entitled to collect the rent of the whole or part of an estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court, or of any provision of law;

“rent value” means the value as determined in accordance with the provisions of section seventy-nine of the Madras Local Boards Act, 1920, with reference to the accounts of the previous fasli year or, in any case in which it is not possible so to determine the rent value, such value as appears to the registration officer to be the rent value;

“tenant” includes all persons who, whether personally or by an agent, occupy a house or land under the owner or landholder or intermediate landholder, whether or not rent is paid to the owner, landholder or intermediate landholder, as the case may be, except that it does not include any person occupying a house in military or police lines rent free by virtue of any office, service or employment.

(2) A person who is paying or is liable to pay the rent of a house shall be deemed to occupy it.

[(3) References in this Part of this Schedule to, or to taxes payable in respect of land or houses relate exclusively to land or houses in the province.]

PART III.

BOMBAY.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency.

1. Inserted by para 9 of Part II of Government of India (Provincial Legislative Assemblies) Order, 1936.

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

(a) in relation to a Bombay city constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the city of Bombay or in the Thane mahal or the South Salsette taluka;

(b) in relation to any other urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof;

(c) in the case of a rural constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency, or in a contiguous constituency of the same communal description;

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European or Anglo-Indian territorial constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income-tax.

Qualifications dependent on property.

3. Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) holds in his own right, or occupies as a tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than eight rupees land revenue; or

(b) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency; or

(c) is a khot or sharer in a khoti village in the constituency, or a sharer in a bhagdari or narwadari village in the constituency, and is responsible for the payment of not less than eight rupees land revenue; or

(d) occupies in the constituency as owner or tenant a house or building, situate in the city of Bombay or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

In sub-paragraph (d) of this paragraph, the expression "the appropriate value" means—

(i) in relation to a house or building situate within the city of Bombay, an annual rental value of sixty rupees;

(ii) in relation to a house or building situate outside the city of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees;

(iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the University of Bombay, or an examination prescribed as at least equivalent to either of those examinations, or, if it is so prescribed, any other prescribed examination, not lower than a vernacular final examination.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) if she is shown in the prescribed manner to be literate; or

(c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if—

(a) in the previous financial year, he was assessed to income-tax; or

(b) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(c) in the constituency he holds in his own right, or occupies as tenant, alienated or unalienated land or land on talukdari tenure assessed at, or of the assessable value of, not less than sixteen rupees land revenue in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, or not less than thirty-two rupees land revenue elsewhere; or

(d) he is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than sixteen rupees in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district and to not less than thirty-two rupees elsewhere; or

(e) he is a khot or sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and, in either case, is responsible for the payment, in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and, elsewhere, of not less than thirty-two rupees land revenue; or

(f) he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value.

In sub-paragraph (f) of this paragraph, the expression "appropriate value" means—

(i) in relation to a house or building in the city of Bombay, an annual rental value of one hundred and twenty rupees;

(ii) in relation to a house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, situate in an area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of twenty-four rupees;

(iii) in relation to any other house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, a capital value of one thousand rupees;

(iv) in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees; and

(v) in relation to any other house or building, a capital value of one thousand five hundred rupees.

Special qualification for scheduled castes.

8. Subject as aforesaid a person who is a member of the scheduled castes, shall also be qualified to be included in the electoral roll for any territorial constituency, if either—

(a) he is shown in the prescribed manner to be literate; or

(b) he was at any time during the year ending on the thirty-first day of December next preceding the prescribed date a person actually performing in the Province the duties of an inferior village office, whether hereditary or not;

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of sub-paragraph (b) of this paragraph be qualified to be entered in any electoral roll.

Application necessary for enrolment in certain cases.

9. No person shall by virtue of paragraph four or of paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included:

Provided that, except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (b) of paragraph seven of this Part of this Schedule.

Provisions as to joint property, etc.

10. (1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land, shall, in relation to any persons who are co-sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a

person if they had been owned, held, occupied or made by or on him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and, in other cases, the member authorised in that behalf by the family themselves.

Save as aforesaid, any property owned, held or occupied, or payments made, jointly by, or assessments made jointly on, the members of a joint family shall be left out of account for the purposes of this Part of this Schedule.

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income-tax.

Interpretation, etc.

11. (1) In this Schedule, in relation to Bombay—

“holder” means a person lawfully in possession of land, whether his possession is actual or not, and “hold” shall be construed accordingly ;

“tenant” means a lessee, whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenant’s rights with possession, and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent-free by virtue of any office, service or employment ;

“Bombay city constituency” means a constituency comprising any part of the city of Bombay.

(2) The value of any machinery, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building.

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

PART IV.

BENGAL.

General requirement as to residence.

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency :

Provided that—

(a) in the case of a Calcutta constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he has a place of residence in Calcutta and a place of business within the constituency ;

(b) in the case of a European constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Bengal but is absent from Bengal on leave from his employment.

(2) In this paragraph “a place of residence” means a place where a person ordinarily and actually resides during the greater part of the year.

Qualifications dependent on taxation

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

(a) has paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year; or

(b) was assessed during the previous year to income-tax; or

(c) was during the previous year entered in the municipal assessment book or licence register, or any other authorised register maintained by the corporation of Calcutta, as having paid in respect of that year either directly or indirectly any sum as consolidated rate, tax or licence fee to the corporation; or

(d) has paid during and in respect of the previous year municipal or cantonment taxes or fees of not less than eight annas, or road and public works cesses under the Cess Act, 1880, of not less than eight annas, or Chaukidari tax under the Village Chaukidari Act, 1870, of not less than six annas, or union rate under the Bengal Village Self-Government Act, 1919, of not less than six annas.

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if at any time during the previous financial or Bengali year he has occupied by virtue of his employment a house in the Province the annual valuation of which is not less than forty-two rupees.

In this paragraph "annual valuation" means the annual rental of the house as ascertained from any accounts of the employer of the person in question which are required by or under any law to be regularly audited or, if the annual valuation is not so ascertainable, one-tenth of the annual remuneration received by the person in question for the employment by virtue of which he occupies it.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation examination of any prescribed university, or an examination prescribed as at least equivalent to any such examination, or if it is so prescribed, any other prescribed examination, not lower than a final middle school examination.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualifications for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military

forces or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom.

7. In relation to a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

(a) he was during the previous year entered in the municipal assessment book as the owner and occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than one hundred and fifty rupees per annum, or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than three hundred rupees per annum and paid during that year his share of the consolidated rate on the land or building; or

(b) he has paid during and in respect of the previous year on his sole account and in his own name, not less than twenty-four rupees either in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923; or

(c) his name is entered in the municipal assessment book in respect of any land or building in Calcutta in respect of which not less than twenty-four rupees was paid in the previous year in respect of the consolidated rate.

8. In relation to an urban constituency which is not a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid, in the municipality of Howrah, municipal taxes or fees of not less than three rupees, or, in any other municipal area or cantonment in the Province, municipal or cantonment taxes or fees of not less than one rupee, eight annas.

9. In relation to a rural constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid not less than one rupee, eight annas in respect of municipal taxes or fees, or not less than one rupee in respect of road and public works cesses under the Cess Act, 1880, or not less than two rupees in respect of *Chaukidari* tax under the Village *Chaukidari* Act, 1870, or in respect of union rate under the Bengal Village Self-Government Act, 1919.

10. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if he either is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or was assessed in the previous year to income-tax, or paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year.

Special provisions as to Darjeeling general constituency.

11. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any rural general constituency comprising any part of the Sadar, Kalimpong and Kurseong sub-divisions of the Darjeeling district if that person either—

(a) has paid during and in respect of the previous year rent of not less than twenty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than two rupees for any land in the Province not situate in a municipal area; or

(b) is the wife of a person who, during and in respect of the previous year, has paid rent of not less than sixty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than six rupees for any land in the Province not situate in a municipal area.

Application necessary for enrolment in certain cases

12. No person shall by virtue of paragraph three or paragraph four of this Part of this Schedule be included in the electoral roll of any territorial constituency, unless application is made in the prescribed manner by him, or, if it is so prescribed, on his behalf, that he should be so included.

Special provisions as to Muhammadan women's constituency.

13. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women.

Interpretation etc.

14. (1) In this Schedule, in relation to Bengal,—

“Calcutta” means Calcutta as defined in paragraph 11 of section three of the Calcutta Municipal Act, 1923;

“a Calcutta constituency” means, subject to the provisions of this paragraph with respect to Anglo-Indian constituencies, European constituencies or Indian Christian constituencies a constituency which comprises any part of Calcutta;

“previous year” means the previous financial year or the previous Bengali year, whichever is appropriate in the particular case;

“Bengali year” means a year ending on the last day of the Bengali month of Chaitra.

(2) Notwithstanding anything in this paragraph, an Order in Council delimiting territorial constituencies may provide that any Anglo-Indian constituency, European constituency or Indian Christian constituency comprising any part of Calcutta, shall, for all or any of the purposes of this Part of this Schedule, be deemed not to be a Calcutta constituency.

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves;

Provided that this paragraph shall not apply where members of a joint family have separate accommodation and separate messing, and in any such case any reference in this Part of this Schedule to any property, payment or assessment shall be construed as a reference to each member's share of that property, payment or assessment.

PART V.

THE UNITED PROVINCES.

General requirement as to residence.

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling-house therein ready for occupation in which he occasionally dwells.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

(a) was assessed during the previous financial year to income-tax; or

(b) was, in an area wholly or partly within the constituency in which a municipal tax is in force, assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum.

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twenty-four rupees per annum¹ [or, in the case of a member of the Scheduled Castes, if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twelve rupees per annum].

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) owns land in the constituency on which land revenue of not less than five rupees per annum is payable; or

(b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum; or

(c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum, is payable; or

(d) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary rent of not less than five rupees per annum is payable; or

(e) in the case of a constituency comprising any part of the Hill Pattis of Kumaun, is resident in those Hill Pattis and, in the constituency, either is owner of a fee simple estate in those Hill Pattis, or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar.

Educational qualification.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination, or an examination which is prescribed as the equivalent thereof.

¹ Inserted by paragraph 5 of Part V of the Government of India (Provincial Legislative Assemblies) Order, 1936.

Qualification by reason of service in His Majesty's forces

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Special provision as to Shilpkars in the Hill Patts of Kumaun

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the Hill Patts of Kumaun if he is a Shilpkar resident in a village in those Hill Patts and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village.

Additional qualifications for women

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) if she is proved in the prescribed manner to be literate; or

(c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

9. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

(a) he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty-six rupees per annum; or

(b) was, in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum; or

(c) owns land in the constituency in respect of which land revenue amounting to not less than twenty-five rupees per annum is payable; or

(d) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect thereof, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than twenty-five rupees per annum; or

(e) is resident in the Hill Patts of Kumaun and, in the constituency, either owns a fee simple estate situate in those Hill Patts or is assessed to the payment of land revenue or cesses of any amount in those Hill Patts, or is a Khaikar; or

(f) is, in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, and is liable as such to rent of not less than twenty-five rupees per annum; or

(g) holds in the constituency as a tenant, land in respect of which a rent of not less than fifty rupees per annum or a rent in kind equivalent to not less than fifty rupees per annum is payable; or

(h) was assessed in the previous financial year to income-tax; or

(i) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Application necessary for enrolment in certain cases.

10. (1) No person shall by virtue of paragraph five or sub-paragraph (a) or sub-paragraph (b) of paragraph eight of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged officer, non-commissioned officer or soldier, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by, or if it is so prescribed, on behalf of, that person, that that person should be so included.

(2) On the preparation of the original electoral roll for any rural constituency or on any revision of the electoral roll for a rural constituency within three years from the commencement of Part III of this Act, no person shall by virtue of her husband possessing any of the other qualifications requisite for the purposes of the said paragraph eight be included in the electoral roll unless application is made in the prescribed manner by her, or if it is so prescribed, on her behalf, that she should be so included.

Interpretation, etc.

11. (1) In this Schedule, in relation to the United Provinces—

“owner” does not include a mortgagee or a lessee, and “own” shall be construed accordingly;

“tenant” as respects any land in a rural area means a tenant as defined in the Agra Tenancy Act 1926, or the Oudh Rent Act, 1886, as the case may be, and does not include a sub-tenant, and as respects any house or building means a person who occupies it on payment of rent, or in the case of a house, not situate in military or police lines, a person who occupies it rent free by virtue of any office, service or employment;

“under-proprietor” means an under-proprietor as defined in the Oudh Rent Act, 1886;

“Khaikar” means a person recorded as such in the records of rights of land in the Hill Patts of Kumaun;

“building” means a building as defined in the United Provinces Municipalities Act, 1916;

“rental value” means the value of a house or building based on the amount of annual rent;

“municipal tax” and “house or building tax,” mean the taxes respectively known by those names imposed under the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, and the Cantonments Act, 1924;

“urban area” means a municipality or notified area as defined in sub-section (9) of section two, and sub-section (2) of section three hundred and thirty-seven of the United Provinces Municipalities Act, 1916, or a town area as defined in the United Provinces Town Areas Act, 1914, or a cantonment;

“rural area” means an area which is not an urban area.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family or joint tenancy, the family or tenancy shall be adopted as the unit for deciding whether under this Part of this Schedule the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a joint Hindu family, the manager thereof or, if there is no manager, the member nominated in that behalf by the majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned.

PART VI.

THE PUNJAB.

General requirements as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency.

For the purposes of this Part of this Schedule proof that a person owns a family dwelling-house or a share in a family dwelling-house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if during the previous financial year either—

(a) he was assessed to income-tax, or was in the Province assessed in respect of any direct municipal or direct cantonment tax to an amount of not less than fifty rupees; or

(b) he was in the Province assessed to haisiyat or profession tax to an amount of not less than two rupees, or, in districts in which no such tax exists, to any other direct tax imposed under the Punjab District Boards Act to an amount of not less than two rupees.

Qualifications dependent on property, etc

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

(a) is the owner of land in the Province assessed to land revenue of not less than five rupees per annum; or

(b) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than five rupees per annum; or

(c) is an assignee of land revenue in the Province amounting to not less than ten rupees per annum; or

(d) is a tenant of not less than six acres of irrigated land in the constituency, or of not less than twelve acres of unirrigated land in the constituency; or

(e) has throughout the twelve months immediately preceding the prescribed date owned immovable property in the Province of the value of not less than two thousand rupees or of an annual rental value of not less than sixty rupees, not being land assessed to land revenue; or

(f) has throughout the twelve months preceding the prescribed date occupied as tenant in the constituency immovable property of an annual rental value of not less than sixty rupees, not being land assessed to land revenue; or

(g) is a zaildar, inamdar, sufedposh or lambardar in the constituency:

Provided that the provisions of sub-paragraph (d) of this paragraph shall be deemed to be complied with in the case of a person who is the tenant of both irrigated and un-irrigated land in the constituency if the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have attained the primary or an equivalent or higher educational standard.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier in His Majesty's regular military forces.

Additional qualification for women.

6. Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if she is shown in the prescribed manner to be literate or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

(a) during the previous financial year was assessed to income-tax, or was assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees; or

(b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(c) has throughout the twelve months preceding the prescribed date owned immovable property in the Province of the value of not less than four thousand rupees or of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue; or

(d) has throughout the twelve months preceding the prescribed date occupied as a tenant immovable property in the constituency of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue; or

(e) is the owner of land in the Province assessed to land revenue of not less than twenty-five rupees per annum; or

(f) is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum; or

(g) is a tenant or lessee under the terms of a lease for a period of not less than three years of Crown land in the constituency for which an annual rent of not less than twenty-five rupees is payable; or

(h) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land assessed to land revenue of not less than twenty-five rupees per annum:

Provided that for the purposes of sub-paragraph (g) of this paragraph, where the amount payable by any tenant or lessee is assessed from harvest to harvest, the annual rent payable by him shall be deemed to be the annual average of the amounts payable by him in the three years preceding that in which the prescribed date falls.

Special qualification for scheduled castes.

8. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

(a) is shown in the prescribed manner to be literate; or

(b) has throughout the twelve months preceding the prescribed date owned immovable property in the Province of a value of not less than fifty rupees, not being land assessed to land revenue, or has throughout that period owned malba of a house in the Province of not less than that value; or

(c) has, throughout the twelve months preceding the prescribed date, occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty-six rupees.

Application necessary for enrolment in certain cases.

9. No person shall, by virtue of paragraph four, paragraph six or sub paragraph (a) of paragraph eight of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included.

Interpretation, etc.

10. (1) In this Schedule, in relation to the Punjab—

“annual rental value” in relation to immovable property means the amount for which the property together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to let, from year to year;

“land revenue” means land revenue as defined in sub-section (6) of section three of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount of land revenue paid during the three agricultural years preceding that in which the prescribed date falls;

“land records” means attested records of rights or attested annual records of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that Chapter;

“agricultural year” means a year ending on the thirtieth day of September;

“owner” does not include a mortgagee;

“tenant” in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887, and in relation to other property means a person who holds that property by lease and is, or, but for a special contract, would be, liable to pay rent therefor, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment;

“zaildar,” “inamdar,” “sufedposh” and “lambardar” mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person.

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owned any immovable property, any period during which it was owned by a person from whom he derives title by inheritance shall be taken into account.

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue.

(4) Where property is held or payments are made by, or assessments are made on, the members of a Hindu joint family, and the respective shares of the members of the family are not specified in the land records or in any municipal or cantonment record or in a decree of a civil court, as the case may be, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and, if it does exist, the person qualified shall be the manager of the family.

(5) Subject to the provisions of the last preceding sub-paragraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or lease of land assessed to land revenue or to assigned land revenue shall, in relation to any persons who are co-sharers in such land, property, tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons:

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother.

(6) Not more than one person shall be qualified in respect of the occupation of a building occupied in common by two or more persons and any question which of those persons is to be qualified shall be determined in the prescribed manner.

PART VII.

BIHAR.

General requirement as to residence.

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he resides in the constituency.

(2) A person shall be deemed to reside within a constituency if he ordinarily lives therein, or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if he was assessed during the previous financial year to income-tax or was, in the previous financial year, assessed to an aggregate amount of not less than one rupee eight annas in respect of municipal tax or is assessed, otherwise than in the Santal Parganas, to chautkidari tax of an annual amount of not less than nine annas¹, or, in the case of a member of the Scheduled Castes, of an annual amount of not less than six annas]:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas.

1. Inserted by Para. 7 of Part VII of the Government of India (Provincial Legislative Assemblies) Order, 1936.

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if he either—

(a) occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay an annual rent of not less than twenty-four rupees; or

(b) holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, for which he is liable to pay a rent of not less than six rupees per annum or a local cess of not less than three annas;

Provided that in relation to land within the Santal Parganas this paragraph shall have effect as if there were substituted for the reference to six rupees, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, a reference to five rupees, and thereafter a reference to three rupees eight annas.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if her husband possesses the qualifications requisite for the purposes of this paragraph, or if she is shown in the prescribed manner to be literate:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

(a) in the previous financial year he was assessed to income-tax; or
(b) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(c) he was in the previous financial year assessed in the Province to an aggregate amount of not less than three rupees in respect of municipal tax; or

(d) he is assessed in the Province, otherwise than in the Santal Parganas, to an annual sum of not less than two rupees eight annas in respect of chaukidari tax; or

(c) he occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay rent of not less than one hundred and forty-four rupees per annum; or

(f) he holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, in respect of which he is liable to pay rent of not less than twenty-four rupees per annum or a local cess of not less than twelve annas.

Special provisions as to Muhammadan women's constituency.

8. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of a person to fill the seat reserved for women.

Interpretation, etc.

9. (1) In this Schedule, in relation to Bihar—

“municipal tax” means a tax or rate levied in a municipality constituted under the Bihar and Orissa Municipal Act, 1922, in an area in respect of which a notification has issued under section three hundred and eighty-eight of that Act, or in a cantonment, or in the area administered by the Patna Administration Committee;

“chaukidari tax” means any tax levied under the Village Chaukidari Act, 1870, the Chota Nagpur Rural Police Act, 1914, or section thirty of the Bihar and Orissa Village Administration Act, 1922.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and if it does exist, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one and one only of those persons shall be qualified and the person to be qualified shall be selected in the prescribed manner.

PART VIII.

THE CENTRAL PROVINCES AND BERAR.

General requirements as to residence.

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless, in the case of a rural constituency, he has a place of residence in the constituency, and, in the case of an urban constituency, he has a place of residence in, or within two miles from the boundary of, the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to have a place of residence in an area if and only if he either—

(a) has actually dwelt in a house within the area for not less than one hundred and eighty days in the aggregate during the previous financial year; or

(b) he has maintained a house within the area for an aggregate period of not less than one hundred and eighty days during that year as a dwelling for himself in charge of his dependants or servants, and has visited that house during that year.

Qualifications dependent upon taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if in the previous financial year he either—

(a) was assessed to income tax;

(b) was, in an urban area in the Province in which a municipal tax based on haisiyat is imposed, assessed to such a tax on a haisiyat of not less than seventy-five rupees.

Qualifications dependent on property, etc.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of a territorial constituency if he either—

(a) holds, in the Central Provinces, as a proprietor or thekadar, an estate or mahal the land revenue or kamil jama of which is not less than two rupees; or

(b) holds, in the Central Provinces, as a proprietor or thekadar in proprietary right, sir land or khudkasht, or, as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or the rent of which is not less than two rupees; or

(c) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than two rupees; or

(d) is, in an urban area in the Province, the owner or tenant of a building, the annual rental value of which is not less than six rupees; or

(e) is a watandar patel or a watandar patwari holding office, or a registered deshmukh or deshpandia or a lambardar.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed an examination which qualifies for admission to a course of study for a degree of the Nagpur University, or an examination prescribed as at least equivalent thereto, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination:

Provided that, in relation to a constituency in Berar, the foregoing provisions of this paragraph shall be deemed to be complied with in relation to any person if he is proved in the prescribed manner to have passed any examination in the State of Hyderabad prescribed as at least equivalent to an examination the passing of which qualifies persons under those provisions.

Qualification by reason of service in His Majesty's forces and the forces of His Exalted Highness the Nizam of Hyderabad.

5. (1) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

(2) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad.

bad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police.

Additional qualification for women.

6. (1) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) if she is proved in the prescribed manner to be literate or to be the holder of a primary school certificate; or

(c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

(2) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or an officer or man of the Hyderabad State Police.

7. (1) A husband shall be deemed to possess the qualifications requisite for the purpose of the last preceding paragraph if he either—

(a) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) holds, in the Central Provinces, as a proprietor or thekadar, an estate or mahal the land revenue or kamil jama of which is not less than thirty-five rupees; or

(c) holds, in the Central Provinces, as a proprietor or thekadar in proprietary right, sir land or khudkasht, or as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or rent of which is not less than thirty-five rupees; or

(d) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than thirty-five rupees; or

(e) is, in an urban area, the owner or tenant of a building of which the annual rental value is not less than thirty-six rupees; or

(f) was, in an urban area in which a municipal tax based on haisiyat is imposed, assessed in the previous financial year to such a tax on a haisiyat of not less than four hundred rupees.

(2) In relation to any territorial constituency in Berar, a husband shall also be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police.

Additional qualification for members of scheduled castes.

8. Subject as aforesaid, a member of a scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if he is a kotwar, a jaglia, or a village mahar holding office.

Application necessary for enrolment in certain cases.

9. No person shall, by virtue of paragraph four of this Part of this Schedule, or by virtue of being a pensioned widow or mother, or of being

literate or the holder of a primary school certificate, or of being the wife of an officer, non-commissioned officer, soldier or man of any force, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included.

Interpretation, etc.

10. (1) In this Schedule, in relation to the Central Provinces and Berar—

“building” means any structure or enclosure, whether used as a human dwelling or otherwise, and includes a part of a building;

“estate,” “mahal,” “malik makbuza,” “kamil jama,” “sir land” and “khudkasht” have the meanings respectively assigned to them in section two of the Central Provinces Land Revenue Act, 1917;

“estate or mahal” includes a part of an estate or a mahal;

“lambardar” means a lambardar appointed under the provisions of the Central Provinces Land Revenue Act, 1917;

“land revenue” means land revenue as defined in section fifty-six of the Central Provinces Land Revenue Act, 1917, and in section forty-nine of the Berar Land Revenue Code, 1928;

“municipal tax” means a tax imposed under the provisions of the Central Provinces Municipalities Act, 1922, or of that Act, as appointed to Berar]

“proprietor” includes an inferior proprietor and a plot proprietor, but does not include a transferee of proprietary rights in possession, or a mortgagee with possession;

“raiyat” means the holder of a survey number as defined in sub-section (18) of section two of the Central Provinces Land Revenue Act, 1917, and includes the holder of land recorded in the land records maintained by the Provincial Government as *milkiyat sarkar*;

“registered deshmukh or deshpandia” means a person, being a deshmukh or deshpandia, whose name is recorded in the registers of political pensions maintained by the Deputy Commissioners in Berar as the holder of a pension or share of a pension;

“rental value,” in relation to immovable property, means the amount for which the property, together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to be let, from year to year;

“tenant,” in relation to agricultural land, means a tenant as defined in sub-section (11) of section two of the Central Provinces Tenancy Act, 1920, but does not include a sub-tenant, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment;

“thekadar” includes a *gaontia* and a protected headman;

“hold” in relation to land or an estate or mahal, means to be recorded in the records maintained under Chapter V of the Central Provinces Land Revenue Act, 1917, or Chapter X of the Berar Land Revenue Code, 1928, or, in the case of the Melghat Taluq of the Amraoti District, in the land records prescribed by the Provincial Government, as the person in possession of the land, estate or mahal;

1. Inserted by paragraph 4 of Part VIII of the Government of India (Provincial Legislative Assemblies) Order, 1936.

"urban area" means a municipality, notified area or cantonment, and includes the Government gun carriage factory estate at Jubbulpore and any prescribed railway settlements;

"watandar Patel" and "watandar patwari" mean respectively a Patel and a patwari appointed under section five of the Berar Patels and Patwaris Law, 1900.

(2) For the purposes of this Part of this Schedule ante-alienation tenants as defined in section seventy-two of the Berar Land Revenue Code, 1928, and section forty of the Berar Alienated Villages Tenancy Law, 1921, permanent tenants as defined in section forty-seven of the Berar Alienated Villages Tenancy Law, 1921, and tenants of antiquity as defined in section seventy-three of the Berar Land Revenue Code, 1928, shall be deemed to hold agricultural land in other than tenancy right.

(3) Subject to the provisions of the next succeeding sub-paragraph, the provisions of this Part of this Schedule shall have effect in relation to any persons who are co-sharers in, or in a tenancy or lease of, land or other immovable property as if the respective shares of those persons in the land, property, tenancy or lease were held separately.

(4) Where property is held or payments are made jointly by the members of a joint family or a tax is assessed jointly on the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(5) Any reference in this Part of this Schedule to a retired, pensioned or discharged officer or man of the Hyderabad State Police shall be deemed not to include a reference to any person who has been dismissed or discharged from the police for disciplinary reasons.

PART IX.

ASSAM.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has a place of residence in the constituency, and a person shall be deemed to have a place of residence in a constituency if he ordinarily lives in the constituency or has his family dwelling place in the constituency and occasionally occupies it:

Provided that in relation to the European constituency the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Assam but is absent from Assam on leave from his employment.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if, in the previous financial year, he either—

(a) was assessed to income-tax; or

(b) was in the constituency assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than two rupees or, in the Sylhet municipality, of not less than one rupee eight annas, or to a tax of not less than one rupee in a Small Town, or, in the district of Sylhet,

the district of Cachar or the district of Goalpara, to a tax of not less than eight annas under the Village Chaukidari Act, 1870.

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if in the constituency, he either—

(a) is the owner of land the land revenue on which has been assessed or is assessable at not less than seven rupees eight annas per annum; or

(b) is liable to pay a local rate of not less than eight annas per annum; or

(c) throughout the previous financial or previous Bengali year held from a landlord land in any of the following districts, that is to say, Lakhimpur, Sibsaigar, Darrang, Nowgong or Kamrup, or in the Garo Hills, and paid to the landlord rent to the value of not less than seven rupees eight annas in respect of that land:

Provided that for the purposes of this paragraph land situate, and local rates levied, in the districts of Sylhet, Cachar and Goalpara shall be left out of account.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the middle school leaving certificate examination or any other examination prescribed as at least equivalent thereto.

Qualification by reason of service in His Majesty's forces

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces or the Assam Rifles.

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles, or if she is proved in the prescribed manner to be literate, or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he—

(a) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles; or

(b) was in the previous financial year assessed to income-tax; or

(c) was in the previous financial year assessed in the constituency in respect of municipal or cantonment rates or taxes—

(i) in the Nowgong municipality, to not less than two rupees; or

(ii) in the Sylhet municipality, to not less than one rupee eight annas; or

(iii) elsewhere in the Province, to not less than three rupees; or

(d) was in the constituency assessed in the previous financial year to a tax of not less than one rupee in a Small Town; or

(e) was in the constituency assessed in the previous financial year in the district of Sylhet, the district of Cachar or the district of Goalpara to a tax of not less than one rupee under the Village Chaukidari Act, 1870; or

(f) elsewhere than in the said districts, is the owner of land in the constituency, the land revenue on which has been assessed or is assessable at not less than fifteen rupees per annum; or

(g) is liable to pay a local rate in the constituency of not less than one rupee per annum.

Application necessary for enrolment in certain cases.

8. No person shall, by virtue of paragraph six of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by her, or, if it is so prescribed, on her behalf, that she should be so included:

Provided that, except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (a) of paragraph seven of this Part of this Schedule.

Special provisions as to seat reserved for women.

9. The following provisions shall have effect in relation to any constituency specially formed for the election of persons to fill the seat reserved for women:—

(a) no man shall be included in the electoral roll for the constituency, or be entitled to vote at any election therein;

(b) ¹[* * * * *]

²[*Special provisions as to Shillong.*

9-A. In the case of any territorial constituency comprising any part of Shillong, any reference in this Part of this Schedule to "the constituency" shall be construed as including a reference to so much of the areas under the jurisdiction of Shillong Municipal Board and the Shillong Cantonment Authority as is not part of British India, and any reference to municipal or cantonment rates or taxes shall be construed as including a reference to any such rates or taxes assessed by or paid to that Board or that Authority in the exercise of any jurisdiction exercised by them in relation to areas outside British India.]

Special provisions as to backward areas and backward tribes.

10. No person who is entitled to vote in the election of a person to fill any of the seats to be filled by representatives of backward areas or backward tribes, or is entitled to be included in the electoral roll for any constituency formed for the purpose of filling any such seat, shall be included in the electoral roll for any territorial constituency in the Province, other than any constituency specially formed for the election of persons to fill the seat reserved for women.

Interpretation, etc.

11. (1) In this Schedule, in relation to Assam—

"Small Town" means a notified area constituted under Chapter XII of the Assam Municipal Act I of 1923;

1. Sub-paragraph (b) of paragraph 9 was omitted by paragraph 5 of Part IX of the Government of India (Provincial Legislative Assemblies) Order, 1936.

2. Inserted by *ibid.*

"Bengali year" means a year ending on the last day of the Bengali month of Chaitra;

"local rate" means the local rate assessed under the Assam Local Rates Regulation, 1879;

"landlord" means a person under whom another person holds land immediately, but does not include the Government;

"rent" includes rent in kind or partly in kind.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the necessary qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves:

Provided that any other member of any such family shall also be qualified if the proportion of the joint property, payment or assessment which corresponds with his share therein would be sufficient for him to be qualified if he held it separately.

PART X.

THE NORTH WEST FRONTIER PROVINCE.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

For the purposes of this Part of this Schedule proof that a person or, in the case of a woman, her husband owns a family dwelling-house or a share in a family dwelling-house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if during the previous financial year, he was either—

- (a) assessed to income-tax; or
- (b) assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees; or
- (c) in the case of a rural constituency, assessed to district board tax of not less than two rupees.

Qualifications dependent on rights in property, etc.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if, in the Province, he either—

(a) owned throughout the twelve months preceding the prescribed date immovable property of the value of not less than six hundred rupees, not being land assessed to land revenue; or

(b) has for the twelve months preceding the prescribed date occupied as a tenant immovable property of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue; or

(c) is the owner of not less than six acres irrigated land or not less than twelve acres unirrigated land or of land assessed to land revenue of not less than five rupees per annum; or

(d) is the assignee of land revenue amounting to not less than ten rupees per annum; or

(e) has been for the whole of the preceding fasli year the tenant of not less than six acres of irrigated land or not less than twelve acres unirrigated land; or

(f) is a zaildar, inamdar or lambardar:

Provided that for the purposes of sub-paragraph (c) and sub-paragraph (e) of this paragraph a person shall be deemed to own or, as the case may be, to have been the tenant of, at least six acres of irrigated land if he owns, or, as the case may be, was the tenant of, irrigated and unirrigated land and the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included—

(a) in the electoral roll for any urban constituency, if he is proved in the prescribed manner to have passed a middle school examination or any other examination prescribed as at least equivalent to that examination;

(b) in the electoral roll for a rural constituency, if he is proved in the prescribed manner to have passed the primary (fourth class) examination or any other examination prescribed as at least equivalent to that examination.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if either—

(a) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) he has an income of at least forty rupees per month; or

(c) he was during the previous financial year assessed to income-tax; or

(d) in relation to an urban constituency, he was, during the previous financial year, assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees; or

(e) in relation to a rural constituency, he was during the preceding financial year, assessed in the Province in respect of any cess, rate or tax

to an amount of not less than four rupees per annum payable to the district board; or

(f) he owned throughout the twelve months preceding the prescribed date immovable property in the Province of the value of not less than six hundred rupees, not being land assessed to land revenue; or

(g) he occupied as a tenant throughout the twelve months preceding the prescribed date immovable property in the Province of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue; or

(h) he is the owner of land in the Province assessed to land revenue of not less than ten rupees per annum; or

(i) he is an assignee of land revenue in the Province amounting to not less than twenty rupees per annum; or

(j) he is a tenant or lessee, under the terms of a written lease for a period of not less than three years, of land in the Province assessed to land revenue of not less than ten rupees per annum; or

(k) he is a tenant with a right of occupancy, as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than ten rupees per annum.

Application necessary for enrolment in certain cases

8. No person shall, by virtue of paragraph four or paragraph six of this part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included.

Interpretation, etc.

9. (1) In this Schedule, in relation to the North-West Frontier Province—

“annual rental value,” in relation to immovable property, means the amount for which the property, together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to be let, from year to year;

“fasli year” means a year ending on the thirtieth day of September;

“land revenue” means land revenue as defined in sub-section (6) of section 3 of the Punjab Land Revenue Act, 1887, and in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount paid during the three years preceding the prescribed date;

“zaildar,” “inamdar” and “lambardar” mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person;

“tenant” in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887, and in relation to other property, means a person who holds that property by lease and is, or, but for a special contract, would be, liable to pay rent therefor, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment.

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owned any immovable property, any period during which it was owned by a person from whom he derives title by inheritance shall be taken into account.

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue.

(4) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and, if it does exist, the person qualified shall be, in the case of a Hindu joint family the manager thereof, and in the other cases the member authorised in that behalf by the family themselves.

(5) Subject to the provisions of the last preceding sub-paragraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or lease of land assessed to land revenue or to assigned land revenue, shall, in relation to any persons who are co-sharers in such land, property, tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons:

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother.

PART XI.

ORISSA.

General requirements as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency, and a person shall be deemed to be resident within a constituency if he ordinarily lives therein or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

Qualifications applicable to all territorial constituencies.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he was assessed to income-tax, or was assessed to an aggregate amount of not less than one rupee, eight annas, in respect of municipal taxes.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

In Part XI of the Sixth Schedule to the Act, References to the Vizagapatam District, the sub-division of Angul and Khondmals sub-division shall be construed as references to the Koraput district, the Angul district and the Khondmals district respectively. Inserted by paragraph 4 of Part XI of the Government of India (Provincial Legislative Assemblies) Order, 1936.

5. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or

(b) if her husband either is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, or in the previous financial year was assessed to income-tax or to an aggregate sum of not less than three rupees in respect of municipal taxes; or

(c) if she is shown in the prescribed manner to be literate:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if sub-paragraph (c) were omitted therefrom.

Special provisions as to the districts of Cuttack, Puri, Balasore and the sub-division of Angul.

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Cuttack, Puri and Balasore and the sub-division of Angul if he either—

(a) is assessed to chaukidari tax of an annual amount of not less than nine annas ¹], in the case of a member of the Scheduled Castes, of not less than six annas;] or

(b) holds land in the Province, not situated in a municipality or an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than two rupees per annum or a local cess of not less than one anna:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas.

7. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any such constituency as is mentioned in the last preceding paragraph if she is the wife of any person who either—

(a) is assessed to chaukidari tax of an annual amount of not less than two rupees eight annas; or

(b) holds land in the Province, not situated in a municipality or in an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or local cess of not less than eight annas.

Special provisions as to the districts of Ganjam and Vizagapatam and the Khondmals sub-division.

8. Subject as aforesaid, a person, not being a member of a backward tribe, shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Ganjam and Vizagapatam or in the Khondmals sub-division—

1. Inserted by paragraph 7 of Part XI of the Government of India (Provincial Legislative Assemblies) Order, 1936.

(a) if in either of those districts or in that sub-division he holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than two rupees per annum; or

²[(b) if he is a member of the scheduled castes, and is a village servant, whether hereditary or not; or; and]

(c) without prejudice to the generality of the foregoing provisions, if, being a woman, she is the wife of a person who in either of those districts or in that sub-division holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than sixteen rupees per annum.

Special provision as to the district of Sambalpur.

9. Subject as aforesaid, a person shall be qualified to be included in the electoral roll for any constituency situated wholly or partly in the district of Sambalpur if, in that district, he either—

(a) holds land, not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than one rupee per annum or village cess of not less than one anna; or

(b) is in occupation of a house for which he is liable to pay rent of not less than six rupees per annum, not being a house in a municipality or sanitation area; or

(c) is assessed to an annual tax of at least twelve annas under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920; or

(d) is a village servant holding office as a jhankar, ganda, kotwar, jagalia or mahar, and holds land recorded in the record-of-rights as service land:

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if for the references in sub-paragraph (a) thereof to one rupee and one anna there were substituted respectively references to two rupees and two annas.

10. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the district of Sambalpur if she is the wife of a person who, in that district, either—

(a) holds land not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or village cess of not less than eight annas; or

(b) is in occupation of a house for which he is liable to pay an annual rent of not less than thirty rupees, not being a house in a municipality or sanitation area; or

(c) is assessed to an annual tax of not less than ten rupees under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920.

Interpretation, etc.

11. (1) In this Schedule, in relation to Orissa—

“backward tribe” has the same meaning as in the Fifth Schedule to this Act;

1. Inserted by para. 7 of Part XI of Government of Indian (Provincial Legislative Assemblies) Order, 1936.

"municipality" means an area constituted a municipality under the Bihar and Orissa Municipal Act, 1922, or the Madras District Municipalities Act, 1920, or an area in respect of which a notification has issued under section three hundred and eighty-eight of the Bihar and Orissa Municipal Act, 1922;

"municipal tax" means a tax or rate levied in a municipality;

"sanitation area" means an area administered under the Central Provinces Village Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920;

"chaukidari tax" means a tax levied under the Village Chaukidari Act, 1870, under section thirty of the Bihar and Orissa Village Administration Act, 1922, or under section forty-seven of the Angul Laws Regulation, 1913.

(2) Where property is held or payments are made jointly by, or assessments made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and if it does exist, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule one and one only of those persons shall be qualified, and the persons to be qualified shall be selected in the prescribed manner.

PART XII.

SIND.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency.

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

(a) in relation to an urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof;

(b) in the case of a rural constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or in a contiguous constituency of the same communal description:

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European territorial constituency if he has, for a period of not less than one hundred and eighty days in the previous financial year, resided in a house in the Province.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it, or has another dwelling in which he

resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule, and to any overriding provisions of this part of this schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income-tax.

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(a) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which, in any one of the five revenue years preceding that in which the prescribed date falls, an assessment of not less than eight rupees land revenue has been paid, or would have been paid if the land had not been alienated; or

(b) cultivates as a Hari ¹[or occupies as a tenant] alienated or unalienated land in the constituency on which in the revenue year preceding that in which the prescribed date falls an assessment of not less than sixteen rupees land revenue has been leviable, or would have been leviable if the land had not been alienated; or

(c) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency; or

(d) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

Where land is cultivated by more than one Hari, only one Hari for every sixteen rupees of land revenue shall be treated as qualified under sub-paragraph (b) of this paragraph in respect of that land, and any question which of several Haris shall be treated as qualified under this paragraph in respect of any land shall be determined in the prescribed manner.

In sub-paragraph (d) of this paragraph, the expression "the appropriate value" means—

(i) in relation to a house or building situate within the city of Karachi, an annual rental value of thirty rupees;

(ii) in relation to a house or building situate outside the city of Karachi but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees;

(iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the university of Bombay or an examination prescribed as at least

1. Inserted by para 6 of Part XII of the Government of Indian (Provincial Legislative Assemblies) Order, 1936.

equivalent to either of those examinations or, if it is so prescribed, any other prescribed examination, not being lower than a vernacular final examination.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if she is proved in the prescribed manner to be literate, or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if he—

(a) was in the previous financial year assessed to income-tax; or
(b) is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces; or

(c) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which, in any one of the five revenue years preceding that in which the prescribed date falls, an assessment of land revenue amounting, in the Upper Sind Frontier district, to not less than sixteen rupees, and, elsewhere, to not less than thirty-two rupees, has been paid, or would have been paid if the land had not been alienated; or

(d) is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency, amounting, in the Upper Sind Frontier district, to not less than sixteen rupees, and, elsewhere, to not less than thirty-two rupees; or

(e) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in a municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

In sub-paragraph (e) of this paragraph, the expression "appropriate value" means—

(i) in relation to a house or building within the city of Karachi, an annual rental value of sixty rupees;

(ii) in relation to a house or building situate in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees; and

(iii) in relation to any other house or building, a capital value of one thousand five hundred rupees.

Application necessary for enrolment in certain cases.

8. No person shall by virtue of paragraph four or paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him, or, if it is so prescribed, on his behalf that he should be so included.

Provisions as to joint property, etc.

9. (1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land, shall, in relation to any persons who are co-sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a person if they had been owned, held, occupied or made by or on him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves.

Save as aforesaid any property owned, held or occupied or payments made jointly by, or assessments made jointly on, the members of a joint family, shall be left out of account for the purposes of this Part of this Schedule.

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income-tax of the provisions of this Part of this Schedule relating to Haris.

Interpretation, etc.

10. (1) In this Schedule, in relation to Sind—

“tenant” means a lessee whether holding under an Instrument or under an oral agreement, and includes a mortgagee of a tenant’s rights with possession, and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent free by virtue of any office, service or employment;

“holder” means a person lawfully in possession of land, whether his possession is actual or not, and “hold” shall be construed accordingly.

(3) The value of any machinery, furniture or equipment contained in or situate upon house or building shall not be included in estimating for the purposes of this Part any of this Schedule the rental value or the capital value of the house or building.

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

NOTES.

Mr. Butler explaining the schedule stated in Parliament.

“In the original Memorandum which accompanied the Bill as introduced the Government said that it was proposed to regulate the franchise in India by Order-in-Council, but a saving phrase was in the Memorandum to say that if there were a request for the franchise to be scheduled the Government would do their best to comply with that request. It has since become clear to us that there is a desire that the franchise should be scheduled to the Bill, and in response to a request that we have decided to schedule the franchise.

The general findings of the Franchise Committee have been included in this Schedule. The Franchise Committee decided to extend the Indian franchise to a certain level. Their detailed recommendations were considered by the Joint Select Committee. In certain respects the Joint Select Committee toned up women's franchise, which had been slightly reduced in the White Paper which had come in between the Report of the Franchise Committee and the Report of the Joint Select Committee.

This Schedule relates solely to the franchise for territorial constituencies; it does not include the franchise for Provincial upper Houses, for example, or for electoral colleges, or the arrangements for all the special interests. The reason for that is that for some time, in fact for a long time, ever since the report of the Franchise Committee, it has been acknowledged that there should be a commission to delimit the constituencies in India, and, in particular, to delimit the constituencies for special interests. (*See now the Provincial Legislative Council Order in Council and Provincial Legislative Assembly Order in Council.*) (*Par. Deb. Vol. 301, Col. 1671 Et. Sq.*)

"A franchise is the measure of political power which you are giving to a particular portion of the population and the Government are certain, after the investigations that have been made, that we have done the best with this franchise to do justice to all the interests in the country. We think that we have, for instance, reformed a defect in the present franchise in that it is already loaded in favour of the towns. We think that in our present franchise we have got over that difficulty, and have done greater justice to the country in India, seeing that India has so predominantly an agricultural population. We believe that no section of the population will be found, after these franchise proposals have been carefully examined, to have been left without a proper means of expressing its own views and opinions. That is the reason for the vote, and we believe that, if the vote given under this Schedule is intelligently used, it will enable every section of the population to achieve its desires under the new Constitution."

"Conditions differ in different Provinces, and therefore it has been wise on the part of the Franchise Committee at this stage, to follow a particular scheme according to the conditions in a particular Province."

The basis of the franchise, therefore, follows the conditions in Particular Provinces. It is important, when framing a franchise at a certain level, to require uniformity upon which the franchise may be said to be fair. In some Provinces the franchise has been based upon land revenue. In the Punjab, where there is a land revenue, the franchise has been based upon it. In Madras, however, where there is an elaborate system of local taxation, the franchise, on the recommendation of the original Madras Franchise Committee, is based upon local taxation.

In some Provinces where there is a permanent settlement it has not been possible to base the franchise on the land revenue, and therefore, as in Bihar, it has been necessary to base the franchise on some form of local taxation." (*Ibid. Col. 1674*)

"The general gross electorate will be in the neighbourhood of 35,000,000. That figure will be made up of about 29,000,000 men and about 6,000,000 women."

The percentage of the total electorate to the total population is just under 14 per cent. and the percentage of the total electorate to the total adult population is 27 per cent. The percentage of the total male electorate to the total adult male population will be about 43 per cent. (*Ibid. Col. 1680.*)

SEVENTH SCHEDULE.

[Ss. 100 & 104]

LEGISLATIVE LISTS.

LIST I.

Federal Legislative List.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not

being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

NOTES.

For the distribution of Power in respect of the matters mentioned in these lists among the Provinces and the Federation, *see* notes to S. 100. As regards the Indian States which 'accede' to the Federation the power of the Federal Legislature is restricted to the subjects which in their Instrument of Accession they designate as those on which the Federal Legislature may make laws for the State. It is expected that the States would generally concede to the Federal Legislature powers to legislate in regard to the 1st 45 items of the list I. *See* notes to S. 6.

The enumeration of subjects in these lists have been as exhaustive as possible and Sir Samuel Hoare stated in Parliament as far as human ingenuity could go no subject that could be thought of had been omitted. Advantage has also been taken of the several decisions which have been rendered on the scope of the enumerated subjects in the several Constitutions and the language has been carefully adopted to get rid of the controversies which have risen elsewhere.

Item 1.—As to the scope of the power, *see* S. 99 (2) (v) and S. 105. *ante*.

"Defence" is not included as a Legislative subject. *Cf.* S. 91 (7), British North America Act, and S. 51 (xx), Commonwealth of Australia Act. *Vide* notes to S. 102, *ante*.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

NOTES.

Item 2.—*Cf.* item 10 of this list. If the property vested in the Federation is used for the purposes specified in this item it is not subject to Provincial Legislation at all.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

NOTES.

Item 3.—Implementing of Treaties and agreements with other countries—including, it would seem, the Dominions. The scope of this power is however restricted by S. 106.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

NOTES.

Item 5.—*Cf.* S. 51 (xii), Commonwealth of Australia Act, which read with S. 115 makes coinage and currency an exclusively Federal subject and S. 91 (14), British North America Act.

6. Public debt of the Federation.

NOTES.

Item 6.—For the power of the Federal legislature to impose limits on borrowing, *see* S. 102, *ante*. Borrowing is an executive function and as executive power is co-extensive under S. 8 with the power to make laws it is included as a legislative subject. *Cf.* S. 51 (iv), Commonwealth of Australia Act and S. 91 (4), British North America Act.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

NOTES.

Item 7.—Wireless broadcasting and other like forms of communication. *cf.* S. 51 (v), Commonwealth of Australia Act—"Telegraph and other like services". On the subject of Wireless broadcasting, *see* S. 129, *ante*.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

NOTES.

Item 10.—*See* notes to Ss. 127 and 172, *ante*.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

NOTES.

Item 13.—Notwithstanding that 'Education' is a Provincial Subject the Universities have been held to fall under item 33 of this list and where the affiliated colleges of any university are not all situated within the area of an "Unit", as for instance the Madras University, they have been held to fall under exclusive Federal Jurisdiction. *See* Adaptation Order in Council relative to the several University Acts.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

NOTES.

Item 17.—An alien friend has no legal right enforceable by action to enter British territory. *Musgrove v. Chung Teeong Toy*, (1891) A.C. 272.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railway; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

NOTES.

Item 23.—See notes to S. 99, *ante*.

Cf. S. 51 (x), Commonwealth of Australia Act. "Fisheries in Australian Waters beyond territorial limits".

The power would extend to the enactment of regulations as to the manner, time and place of fishing, measures for the protection and preservation of fish and for preventing waste or destruction of fish. It would not extend to the buying or selling of fish by the Federation. *Cf. Attorney General for Canada v. A. G. for British Columbia*, (1930) A. C. 111.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

NOTES.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

NOTES.

Item 28.—*Quære*: Whether the Provincial Legislatures can fix the rates of interest that might be stipulated for in the documents specified in this section by virtue of the entry relating to "money-lending" in item 27 of List II.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

NOTES.

Item 35.—In the Bill as drafted "mines and mineral development" was a Provincial subject. During the Committee stage the subjects were transferred to list (1) on the ground; "We think it right that the regulation of labour and safety in mines should be a central subject. There is a technical department which deals with this matter. It is a thing which requires uniformity. The staff is small, but it would lead to the unnecessary expense if every Province had to have its own technical staff. Apart from the fact, it is desirable that there should be uniformity in dealing with this very important matter with regard to the regulation of labour and safety in mines".

Item 36.—If there is inaction at the Centre the Provinces can go ahead with their own regulations and developments, but to the extent to which the Centre desires and declares by law that there shall be central regulations and control, then the subject comes out of the purely restricted Provincial field and becomes a subject of control at the Centre (*Par. Deb., Vol. 301, Cols. 1451-2*).

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

NOTES.

Item 39.—"This deals with the powers of the Federal Legislature to extend the powers and jurisdiction of members of a police force belonging to any part of British India, and which deals also with the position where it may be desired to extend the powers of a police force in a State to a railway area outside that State. The position is that if you have a single railway system, there is an advantage in having a single police area in connection with it. Suppose the line of a railway owned by a State goes for 20 or 30 miles outside the boundaries of that State into British India, it is convenient that there should be power to enable the police jurisdiction of the State to extend along its own railway, although actually it is running in British territory. There is a power the other way that laws may be made extending the powers of the police force in British India to railway areas and to other areas in another Governor's Province or a Chief Commissioner's Province in British India." (*Par. Deb., Vol. 301, Cols. 1470-71*.)

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of

persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of custom, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs;

(c) medicinal and toilet preparation containing alcohol, or any substance included in sub-paragraph (b) of this entry.

NOTES.

Item 45: *Excise*.—"A mere licence to sell or carry on business, unconnected with production imposed merely with respect to sale of goods as existing articles of trade and commerce independently of local production, is not a duty of excise. Nor is such a licence, though indirectly connected with production or manufacture an excise duty if it be *regulative* and not a form of taxation". (*Hynes, Legislative and executive powers in Australia*, p. 316).

Ci. R. v. Caledonian Collieries, (1928) A. C. 358 and *A. G. for British Columbia v. King, one Navigation Co.*, (1934) A. C. 45.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

NOTES.

Item 51.—"Under both the Australian and the Canadian Constitutions 'Weights and measures are within Federal competence. Under this item, standards of weight alone are reserved to the Federation. Cf. Art. 1, S. 8 (5) of the Constitution of the United States under which Congress has power to 'fix standards of weight and measures'. Regulations of measures would apparently fall within the item 'Trade and Commerce' No. 27 of the Provincial List. Similarly even in regard to weights, legislation such as penalising the sale of articles below a weight or measure would also seem to fall under the power of the Provinces under item 27."

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II.

PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subject to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

NOTES.

Item 3.—Speaking about the railway police being assigned to the Provincial list the Joint Parliamentary Committee stated thus: "Railway Police in India is at present classified as a provincial subject, but the Central Government retains, under the existing Devolution Rules, the power to determine conditions as regards limits of jurisdiction and contributions by the Railways to the cost of maintenance. We are informed that for many years past the question of the allocation of the cost of the Railway Police between the Provincial Governments on the one hand and the Railways on the other has been a subject of controversy, and we have considered the best means of avoiding, or at all events mitigating, such controversies under the new Constitution. One course, which has the obvious attractions of theoretical simplicity, would be to make the policing of the Railways, along with the general control of Railways, an exclusively federal subject, thereby making the Federal Government solely responsible for the control of the administration, and for the financing of the whole of the Railway Police. We are satisfied, however, that such an arrangement, which would reverse a practice of many years standing would gravely prejudice the efficiency, not merely of the Railway Police, but of the Provincial Police as well. It is essential that the regular Police Force of a Province should act in close co-operation with the separately organised Railway Police and that both should be subordinate to the same Inspector-General. This result could not be secured if the control of the two bodies were in separate hands. We feel no doubt, therefore, that the right solution is to classify Railway Police as an exclusively provincial subject that the Railway Police Force of each Province should be financed in the main from Provincial revenues, but that there should be as at present a contribution from the Federal Government to the Provinces which would, in fact, consist of the appropriate contribution from the Railways, and the amount of which would necessarily have to be determined by the Federal Government." (*J.P.C., Para. 239.*)

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof, the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

NOTES.

Item 19.—Water storage and 'water power' are exclusively Provincial while "Electricity" is a subject in the Concurrent List. *Quære* whether in the context 'water power' is used in the sense of water power used as such, *e.g.*, to turn a mill as distinguished from the conversion of the power into electricity and the use of the electricity so produced. Or has the item electricity to be understood as electricity produced by thermal generation as distinguished from that produced by hydro-electric plants?

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province, markets and fairs, money lending and money lenders.

NOTES.

Item 27.—See notes to S. 297.

Is a contract relating to the restraint of Trade a part of the Law of Trade or of the Law of Contract—within the concurrent list? It would seem that the regulation of such contracts are really part of the law of trade. As regards Trading Corporations, the incorporation, regulation and winding up are matters within the exclusive competence of the Federal Legislature. They would of course be subject to the Provincial Laws of the Province in which they carry on their trading operations. But such laws if they should "sterilize or destroy the capacities and powers" which the Federation has validly conferred would be *ultra vires*. Cf. *John Deere Plow v. Wharton*, (1915) A.C. 330 and *Great West Saddlery Co. v. The King*, (1921) 2 A.C. 91.

Quære, whether legislation providing for composition or debt conciliation, say of agriculturists, under the head "money and money-lenders" would not trench on item 12 in the concurrent list "Bankruptcy and Insolvency." Cf. *A.G. for British Columbia v. A.G. for Canada*, (1937) A.C. 391.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

NOTES.

Item 40.—At the same or lower rates—carries out the rule in S. 297 (1) (b) which prohibits discrimination in favour of products of local origin.

- 41. Taxes on agricultural income.
- 42. Taxes on lands and buildings, hearths and windows.
- 43. Duties in respect of succession to agricultural land.
- 44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.
- 45. Capitation taxes.
- 46. Taxes on professions, trades, callings and employments.
- 47. Taxes on animals and boats.
- 48. Taxes on the sale of goods and on advertisements.
- 49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
- 50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
- 51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
- 52. Dues on passengers and goods carried on inland waterways
- 53. Tolls.
- 54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

PART I.

- 1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.
- 2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.
- 3. Removal of prisoners and accused persons from one unit to another unit.
- 4. Civil Procedure, including the Law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce; infants and minors; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land; registration of deeds and documents.
9. Trusts and Trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency; administrators-general and official trustees.
13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.
15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.
16. Legal, medical and other professions.
17. Newspapers, books and printing presses.
18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.
19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy; criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II.

26. Factories.
27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
28. Unemployment insurance.
29. Trade unions; industrial and labour disputes.
30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
31. Electricity.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.
33. The sanctioning of cinematograph films for exhibition.
34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

EIGHTH SCHEDULE.

[S. 182].

THE FEDERAL RAILWAY AUTHORITY.

1. The Federal Railway Authority, which shall be a body corporate by, and may sue and be sued in, that name (in this Schedule referred to as "the Authority") shall consist of seven persons to be appointed by the Governor-General.

2. A person shall not be qualified to be appointed or to be a member of the Authority—

(a) unless he has had experience in commerce, industry, agriculture, finance, or administration; or

(b) if he is, or within the twelve months last preceding has been—

(i) a member of the Federal or any Provincial Legislature; or

(ii) in the service of the Crown in India; or

(iii) a railway official in India.

3. Of the first members of the Authority, three shall be appointed for three years and any of those members shall at the expiration of his original term of office be eligible for re-appointment for a further term of three years, or of five years.

Subject as aforesaid, a member of the Authority shall be appointed for five years and shall at the expiration of his original term of office be eligible for re-appointment for a further term not exceeding five years.

The Governor-General, exercising his individual judgment, may terminate the appointment of any member if satisfied that that member is for any reason unable or unfit to continue to perform the duties of his office.

4. The Governor-General, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office.

5. A member of the Authority shall be entitled to receive such salary and allowances as the Governor-General, exercising his individual judgment, may determine:

Provided that the emoluments of a member shall not be reduced during his term of office.

6. All acts of the Authority and all questions before them shall be done and decided by a majority of the members present and voting at a meeting of the Authority.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

7. If a member of the Authority is or becomes the holder of or tenders for any contract for the supply of materials to, or the execution of works for, any railway in India, or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, he shall forthwith make full disclosure of the facts to the Authority and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract.

8. At any meeting of the Authority a person or persons deputed by Governor-General to represent him may attend and speak, but not vote.

9. Subject to the provisions of this Act, the Authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

10. The proceedings of the Authority shall not be invalidated by any vacancy among their number, or by any defect in the appointment or qualification of any member.

11. At the head of the executive staff of the Authority there shall be a chief railway commissioner, being a person with experience in railway administration, who shall be appointed by the Governor-General exercising his individual judgment, after consultation with the Authority.

12. The chief railway commissioner shall be assisted in the performance of his duties by a financial commissioner, who shall be appointed by the Governor-General, and by such additional commissioners, being persons with experience in railway administration, as the Authority on the recommendation of the chief railway commissioner may appoint.

13. The chief railway commissioner shall not be removed from office except by the Authority and with the approval of the Governor-General, exercising his individual judgment, and the financial commissioner shall not be removed from office except by the Governor-General, exercising his individual judgment.

14. The chief railway commissioner and the financial commissioner shall have the right to attend any meeting of the Authority, and the financial commissioner shall have the right to require any matter which relates to, or affects, finance to be referred to the Authority.

15. The Authority shall not be liable to pay Indian income-tax or super-tax on any of its income, profits or gains.

16. The Authority shall entrust all their money which is not immediately needed to the Reserve Bank of India and employ that bank as their agents for all transactions in India relating to remittances, exchange and banking, and the bank shall undertake the custody of such moneys and such agency transactions on the same terms and conditions as those upon which they undertake the custody of moneys belonging to, or agency transactions for, the Federal Government.

NINTH SCHEDULE.

[S. 317.]

PROVISIONS OF GOVERNMENT OF INDIA ACT CONTINUED IN FORCE WITH AMENDMENTS UNTIL THE ESTABLISHMENT OF THE FEDERATION.

The Governor-General's Executive Council.

36. (1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a High Court, of not less than ten years' standing.

(4) If any member of the Council (other than the Commander-in-Chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council, in any case where such provision is not made by the foregoing provisions of this section.

37. If the Commander-in-Chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General.

Rank and precedence
of Commander-in-Chief.

Vice-President
Council.

38. The Governor-General shall appoint a member of his Executive Council to be vice-president thereof.

39. (1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints.

Meetings.

(2) At any meeting of the Council the Governor-General or other person presiding and one member of the Council (other than the Commander-in-Chief) may exercise all the functions of the Governor-General in Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council.

Business of Governor-
General in Council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

Procedure in case of
difference of opinion.

(2) Provided that, whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting

of the Council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the Council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not lawfully have done with the concurrence of his Council.

42. If the Governor-General is obliged to absent himself from any meeting of the Council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member (other than the Commander-in-Chief) present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present:

Provided that, if the Governor-General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the majority at a meeting of the Council.

43. (1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his Executive Council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the Council.

The Indian Legislature.

63. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

63-A. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

63-B. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under this Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

63-C. (1) There shall be a president of the Legislative Assembly, who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(2) There shall be a deputy-president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) A president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(4) A president and deputy-president shall receive such salaries as may be determined by Act of the Indian Legislature.

63-D. (1) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting:

Duration and sessions of Legislative Assembly and Council of State.

Provided that—

(a) either chamber of the legislature may be sooner dissolved by the Governor-General; and

(b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and

(c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

63-E. (1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

Supplementary provisions as to composition of Legislative Assembly and Council of State. **64.** (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

(a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and

(b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and

(c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matter incidental or ancillary thereto; and

(d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and

(e) the final decision of doubts or disputes as to the validity of an election; and

(f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

67. (1) Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(2-A) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill or any clause of it, or the amendment, affects the safety or tranquillity of British India or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

67-A. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration unless the Governor-General otherwise directs:—

(i) interest and sinking fund charges on loans; and
 (ii) expenditure of which the amount is prescribed by or under any law; and

(iii) salaries (including in the case of the Governor-General sums payable on his account in respect of his office) and pensions payable to or to the dependants of—

(a) persons appointed by or with the approval of His Majesty;
 (b) Chief Commissioners and Judicial Commissioners; and
 (iv) any grants for purposes connected with the administration of any areas in a Province which are for the time being Excluded Areas; and

(v) the sums payable to His Majesty under the Government of India Act, 1935, in respect of the expenses of His Majesty incurred in discharging the functions of the Crown in relation to Indian States; and

(vi) expenditure classified by the order of the Governor-General in Council as—

(a) ecclesiastical;
 (b) external affairs;
 (c) defence; or
 (d) relating to tribal areas.

(vii) Expenditure of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of the Government of India Act, 1935, for the time being in force to act in his discretion;

(viii) any other expenditure declared by the provisions of the Government of India Act, 1935, for the time being in force to be charged on the revenues of the Federation.

(4) If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

67-B. (1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

Provision for case of failure to pass legislation.

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to:

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

68. (1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

Assent of Governor-General to Bills.

(2) A Bill passed by both chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

69. (1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act.

Power of Crown to disallow Acts.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any

Power to make ordinances in cases of emergency.

ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act.

Salaries, leave of absence, vacation of office, etc.

Salaries and allowances of Governor-General and certain other officials in India.

85. (1) There shall be paid to the Governor-General of India, to the Commander-in-Chief of His Majesty's Forces in India and to the members of the Governor-General's Executive Council (other than the Commander-in-Chief), out of the revenues of the Governor-General in Council, such salaries and such allowances (if any) for equipment and voyage as the Secretary of State may by order fix in that behalf and subject to or in default of any such order as are payable at the commencement of Part III of the Government of India Act, 1935; but the salary of the Governor-General shall not exceed two hundred and fifty-six thousand rupees annually, the salary of the Commander-in-Chief shall not exceed one hundred thousand rupees annually and the salary of members of the Governor-General's Executive Council (other than the Commander-in-Chief) shall not exceed eighty thousand rupees annually.

(2) Provided as follows:—

(a) the Secretary of State shall not make any Order affecting salaries of members of the Governor-General's Executive Council except after consulting his advisers and with the concurrence of at least one-half of them;

(b) if any person to whom this section applies holds or enjoys any pension or salary or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;

(c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of the Governor-General in Council.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein:

Provided that nothing in this section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons before the commencement of Part III of the Government of India Act, 1935, by the Secretary of State in Council or may thereafter be sanctioned by the Secretary of State.

Power to grant leave of absence to Governor-General, etc.

86. (1) The Secretary of State may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs.

(2) The Governor-General in Council may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office:

Provided that the Secretary of State may, if he thinks fit, extend any period of leave so granted, but in any case the reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance of this section, he shall retain his office during the period of leave as originally granted, or, if that period is extended by the Secretary of State during the period as so extended, but, if his absence exceeds that period, his office shall be deemed to have become vacant in the case of a person granted leave for urgent reasons of public interest as from the termination of that period and in any other case as from the commencement of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave-allowances as may be prescribed by rules made by the Secretary of State, but, if he does not resume his duties upon the termination of the period of the leave, he shall, unless the Secretary of State otherwise directs, repay, in such manner as may be so prescribed as aforesaid, any leave-allowances received under this sub-section.

(6) If the Governor-General or the Commander-in-Chief is granted leave for urgent reasons of public interest, the Secretary of State may, in addition to the leave-allowances to which he is entitled under this section, grant to him such further allowances in respect of travelling expenses as the Secretary of State may think fit.

(7) Rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

87. (1) Where leave is granted in pursuance of the foregoing section to the Governor-General or to the Commander-in-Chief, a person shall be appointed to act in his place during his absence, and the appointment shall be made by His Majesty by warrant under the Royal Sign Manual. The person so appointed during the absence of the Commander-in-Chief may, if the Commander-in-Chief was a member of the Executive Council of the Governor-General, be also appointed by the Governor-General in Council to be a temporary member of that Council.

(2) The person so appointed shall, until the return to duty of the permanent holder of the office, or, if he does not return, until a successor arrives, hold and execute the office to which he has been appointed and shall have and may exercise all the rights and powers thereof and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

89. (1) If any person appointed to the office of Governor-General is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the Council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior member of the council (other than the Commander-in-Chief) then present, shall preside therein, with the same powers as the Governor-General would have had if present.

90. (1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, that one of the following Governors, that is to say, the Governor of Madras, the Governor of Bombay, and the Governor of Bengal, who was first appointed to the office of Governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

Temporary vacancy in
office of Governor-General.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office foregoing the salary and allowances appertaining to his office of Governor, and shall not act in his office of Governor.

(3) If, on the vacancy occurring, it appears to the Governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in Council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of section eighty-nine of this Act shall apply.

(4) Until such a Governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the Executive Council (other than the Commander-in-Chief) shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of Council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as member of Council for that period.

92. (1) If a vacancy occurs in the office of a member of the Executive Council of the Governor-General (other than the Commander-in-Chief), and there is no successor present on the spot, the Governor-General in Council shall supply the vacancy by appointing a temporary member of Council.

Temporary vacancy in
office of member of the
Executive Council.

(2) Until a successor arrives, the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If a member of the Executive Council of the Governor-General (other than the Commander-in-Chief) is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave or special duty, the Governor-General in Council shall appoint some person to be a temporary member of Council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(4-A) When a member of the Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such and a temporary member of Council is appointed in his place, the absent member shall be entitled to receive half his salary for the period of his absence.

(5) Provided as follows:—

(a) no person may be appointed a temporary member of Council who might not have been appointed to fill the vacancy supplied by the temporary appointment; and

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's Executive Council, no temporary appointment may be made under this section to fill the vacancy, and, if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

93. (1) A nominated or elected member of either chamber of the Indian legislature may resign his office to the Governor-General, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office the Governor-General may, by notification published in the government gazette, declare that the seat in Council of that member has become vacant.

Vacancies in legislative councils.

Supplemental.

129-A. (1) Where any matter is required to be prescribed or regulated by rules under this Act, and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State, and shall not be subject to repeal or alteration by any legislature in India.

(2) Any rules made under this Act may be so framed as to make different provision for different provinces.

(3) Any rules to which sub-section (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and

those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder:

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications and additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be of full force and effect, and shall not require to be further laid before Parliament.

TENTH SCHEDULE.
ENACTMENTS REPEALED.

Session and Chapter of Act.	Title.	Extent of Repeal.
21 Geo. 3. c. 70.	The East India Company Act, 1780	Section eighteen ¹
37 Geo. 3 c. 142.	The East India Act, 1797.	Section twelve. ¹
16 & 17 Vict. c. 107.	The Customs Consolidation Act, 1853.	Section three hundred and twenty-nine. ²
23 & 24 Vict. c. 89.	An Act to extend in certain cases the provisions of the Superannuation Act, 1859	The whole Act. ³
47 & 48 Vict. c. 38.	The Indian Marine Service Act, 1884.	The whole Act.
56 & 57 Vict. c. 62	The Madras and Bombay Armies Act, 1893.	The whole Act. ⁴
5 & 6 Geo. 5. c. 61.	The Government of India Act, 1915.	The whole Act.
6 & 7 Geo. 5. c. 37.	The Government of India (Amendment) Act, 1916.	The whole Act, except sections six and eight. ⁵
9 & 10 Geo. 5. c. 101.	The Government of India Act, 1919.	The whole Act, except the Preamble and sub-section (1) of section forty-seven. ⁶

1. See S. 301.

2. This section enabled the Indian Legislature to permit the conveyance of goods or passengers from one part of the possessions of the East India Company to another part in other than British Ships. Now it is obsolete.

3. This Act dealt with the superannuation rights of officers who were transferred from the Home Civil Service to the India Office. Now obsolete.

4. This Act abolished the offices of the Commander-in-Chief of the forces in Madras and Bombay, etc.

5. Section 6 provides for the Transfer of India stock by deed and S. 8 is the Short Title to the Act.

6. See Notes to S. 321.

THE GOVERNMENT OF INDIA ACT, 1935.

ENACTMENTS REPEALED (*Contd.*).

Session and Chapter and Act.	Title.	Extent of Repeal.
12 & 13 Geo. 5. c. 20.	The Indian High Courts Act, 1922.	The whole Act.
14 & 15 Geo. 5. c. 28.	The Government of India (Leave of Absence) Act, 1924.	The whole Act.
15 & 16 Geo. 5. c. 83.	The Government of India (Civil Services) Act, 1925.	The whole Act.
17 & 18 Geo. 5. c. 8.	The Government of India (Indian Navy) Act, 1927.	The whole Act, except section two and sub-section (1) of section four. ⁷
17 & 18 Geo. 5. c. 24	The Government of India (Statutory Commission) Act, 1927.	The whole Act.
20 & 21 Geo. 5. c. 2.	The Government of India (Aden) Act, 1929.	The whole Act.
23 & 24 Geo. 5. c. 23.	The Government of India (Amendment) Act, 1933,	The whole Act
23 & 24 Geo. 5. c. 36.	The Administration of Justice (Miscellaneous Provisions) Act, 1933.	In the First Schedule the words "5 & 6 Geo. 5. c. 61; The Government of India Act; section one hundred and twenty-seven." ⁸

7. The stations which are saved from repeal have the effect of making officers of the Royal Navy and Royal Marines, who have served in the Indian Navy subject to the Naval Discipline Act.

8. This is consequential on the repeal of the Government of India Act, 1919.

DRAFT INSTRUMENTS OF INSTRUCTIONS TO THE GOVERNOR-GENERAL AND GOVERNORS

Under Ss. 13 and 53 of the Act, the Secretary of State is to lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General or the Governors. No further proceedings are to be taken in relation to such Instructions except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

The following draft Instruments of Instructions were presented to Parliament in February, 1935, (Cmd. 1805) by the Secretary of State for India as illustrating the contents of these documents which the Government had in mind. The drafts are based in the main on recommendations of the Joint Select Committee, and also contain some passages and phrases (for example in paragraph XXXI of the Governor-General's Instructions) which have been used in the past in Instructions to the Governor-General and Governors.

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL.

Whereas by Letters Patent bearing even date we have made effectual and permanent provision for the Office of Governor-General of India:

And whereas by those Letters Patent and by the Act of Parliament passed on (2nd August, 1935) and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the Government of India and of Our Federation of India are declared to be vested in the Governor-General as Our representative:

And whereas, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from our Secretary of State, and to the duty of Our Governor-General to give effect to any instructions so received, we are minded to make general provision regarding the manner in which Our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which We have reposed in him.

And whereas by the said Act it is provided that the draft of any such Instructions to be issued to Our Governor-General shall be laid by Our Secretary of State before both Houses of Parliament:

And whereas both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to our Governor-General in the form which hereinafter follows:

Now THEREFORE We do by these Our Instructions under Our Sign Manual and Signet declare Our Pleasure to be as follows:—

A.—Introductory.

I. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General according to the provisions of Our Letters Patent constituting the said Office.

II. Our Governor-General for the time being shall with all due solemnity, cause Our Commission under Our Sign Manual, appointing him, to be read and published in the presence of the Chief Justice of India for the time being, or, in his absence, other Judge of the Federal Court.

III. Our said Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold Office as a member of the Council of Ministers the oaths of Office and of secrecy hereto appended.

... V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor-General, he shall not quit India during his term of Office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—In Regard to the Executive Authority of the Federation.

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration, to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, and economic welfare.

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, Our Governor-General shall in the

exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases Our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI. Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of Our Governor-General for securing the sphere of executive action any of the purposes which the provisions of Chapter III of Part V, (which deals with discrimination) of the said Act are designed to secure in relation to legislation shall be construed

by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measure which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products: and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted and the mutual obligations which arise therefrom.

XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised¹, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government Our Governor-General shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Federation: and further that no reappropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister; and that in any case in which the

1. The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

XVIII. Further, it is Our will and pleasure that, in the administration of the Department of Defence, Our Governor-General shall obtain the views of Our Commander-in-Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to Our Secretary of State whenever the Commander-in-Chief may so request on any occasion when Our Governor-General communicates with Our Secretary of State upon them.

XIX. And We desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

C.—In Regard to Relations between the Federation, Provinces and Federated States.

XX. Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession:

And whereas in the interest of the harmonious co-operation of the several members of the body politic the said Act has empowered Our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States:

It is Our will and pleasure that Our Governor-General, in the exercise of these powers, should give unbiased consideration as well to the views of the Governments of Provinces and Federated States as to those of his

own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or Federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further to Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Governments of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular We require Our Governor-General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of moneys assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such a loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation; but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal

Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the said Act, it is Our will and pleasure that Our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal law, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those Codes of law through which uniformity of legislation hitherto been secured.

D.—Matters Affecting the Legislature.

XXVII. Our Governor-General shall not assent in Our name to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill;

(c) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;

(d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act (which deals with discrimination).

(In the House of Lords on 18th July 1935, the Marquess of Zetland (without wishing to bind himself to the actual words) said that at the end of paragraph XXVII he would propose to insert some such words as these—

"In considering whether or not he shall assent in Our name to any Bill other than a Bill of any of the classes enumerated in the foregoing sub-paragraphs Our Governor-General (and in the case of a Province Our Governor) shall without prejudice to his power to withhold his assent upon any ground whatsoever have special regard to the effect of the Bill upon any of his special responsibilities)."

XXVIII. It is further Our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act (the establishment of Provincial Autonomy), Our Governor-General in notifying his assent in Our name to any Act of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar has been given on Our behalf and in virtue

of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam.

XXIX. It is Our will that the power vested by the said Act in Our Governor-General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXX. It is Our will and pleasure that, in choosing representatives of British India for the seats in the Council of State which are to be filled by Our Governor-General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women; and in any nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall, so far as may seem to him just, be guided by the proportion of seats allotted to such minority communities among the British India representatives of the Federal Assembly.

E.—General.

XXXI. And finally, it is Our will and pleasure that Our Governor-General should so exercise the trust which we have reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among Our Dominions.

I

INSTRUMENT OF ACCESSION.

(PROVISIONAL DRAFT.)

Circulated to Indian States.

(August, 15.)

The following press communique has been issued:—

A provisional draft Instrument of Accession was published in Command paper No. 4843. It has since been revised in the light of the Government of India Act of 1935 and of the various criticisms upon it, the revised form reproduced below is being circulated to Indian States individually with a view to early discussion with Rulers:—

Instrument of Accession of the . . . (insert full name and title)

WHEREAS proposals for the establishment of a Federation of India comprising such Indian States as may accede thereto and the Provinces of British India constituted as Autonomous Provinces have been discussed between representatives of His Majesty's Government of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States;

AND WHEREAS those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom and by the accession of Indian States;

AND WHEREAS provision for the constitution of a Federation of India has now been made in the Government of India Act, 1935;

AND WHEREAS that Act provided that the Federation shall not be established until such date as His Majesty may, by proclamation, declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation;

AND WHEREAS the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation;

I. Now, therefore, I (insert full name and title), Ruler of (insert name of State), in the exercise of my sovereignty in and over my said State for the purpose of co-operating in the furtherance of the interests and welfare of India by uniting in a Federation under the Crown by the name of the Federation of India with the Provinces called Governors' Provinces and with the Provinces called Chief Commissioners' Provinces and with the Rulers of other Indian States do hereby execute this my Instrument of Accession, and I hereby declare that subject to His Majesty's acceptance of this Instrument, I accede to the Federation of India as established under the Government of India Act, 1935, (here-in-after referred to as "the Act") with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of this, my Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Federation, exercise in relation to

the State of (hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this, my Instrument of Accession.

3. I accept the matters specified in the first schedule hereto as the matters with respect to which the Federal legislature may make laws for this State and in this Instrument and in the said first schedule, I specify the limitations to which the power of the Federal Legislature to make laws for this State and the exercise of the executive authority of the Federation in this State are respectively to be subject. Where, under the first schedule hereto, the power of the Federal Legislature to make laws for this State with respect to any matter specified in that schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with and subject to that limitation.

4. The particulars to enable due effect to be given to the provisions of Ss. 147 and 149 of the Act are set forth in the second schedule hereto.

5. References in this Instrument to laws of the Federal Legislature include references to ordinances promulgated, acts enacted, and laws made by the Governor-General of India, under Ss. 42 to 45 of the Act inclusive.

6. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, save as provided by this Instrument or by any law of the Federal Legislature made in accordance with the terms thereof, the exercise of any of my powers, authority and right in and over this State.

7. Nothing in this Instrument shall be construed as authorising Parliament to legislate for or exercise jurisdiction over this State or its Ruler in any respect, provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the second schedule thereto and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment, but no such amendment shall, unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which, by virtue of this Instrument, are exercisable by His Majesty or any Federal authority in relation to this State.

8. The schedules hereto annexed shall form an integral part of this Instrument.

9. This Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that, if the Federation of India is not established before the day of . . . 19 . . . this Instrument shall on that day become null and void for all purposes whatsoever.

10. I hereby declare that I execute this Instrument for myself, my heirs and successors and that accordingly any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors. This Instrument of Accession—(then follows the attestation to be drawn with all due formality appropriate to the declaration of a Ruler).

The following additional paragraph is for insertion in proper cases:—

(a) WHEREAS I am desirous that functions in relation to the administration in this State of laws of the Federal Legislature, which apply therein

shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor-General of India and are set out in the schedule hereto.

Now, therefore, I hereby declare that I accede to the Federation with the assurance that the said agreement will be executed and the said agreement, when executed, shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

(b) The provisions contained in Part VI of the Act with respect to interference with water supplies, being sections 130 to 133 thereof inclusive, are not to apply in relation to this State.

(c) WHEREAS notice has been given to me of His Majesty's intention to declare, in signifying his acceptance of this, my Instrument of Accession, that the following areas are areas to which it is expedient that the provisions of sub-section (1) of section 294 of the Act should apply.

Now, therefore, I hereby declare that this Instrument is conditional upon His Majesty making such a declaration.

II

LETTERS PATENT passed under the Great Seal of the Realm constituting the office of Governor-General of India.

Dated 5th March, 1937.

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and
of the British Dominions beyond the Seas King Defender of the Faith
Emperor of India:

To all to whom these Presents shall come

GREETING:

WHEREAS by section 3 (1) of the Government of India Act, 1935
(hereinafter referred to as "the Act"), it is enacted that the Governor-
General of India is appointed by Us by a Commission under Our Sign
Manual:

AND WHEREAS by the Act it is further enacted that the Governor-
General has all such powers and duties as are conferred on him by or
under the Act and such other powers belonging to Us, not being powers
connected with the exercise of the functions of the Crown in its relations
with Indian States, as We may be pleased to assign to him:

AND WHEREAS We are minded to make permanent provision for the
office of Governor-General of India:

NOW, THEREFORE, We do declare Our Will and Pleasure to be as
follows:—

1. We do hereby constitute, order and declare that there shall be a
Governor-General of India.

2. And We do hereby authorise and empower our Governor-General
in Our name and on Our behalf to grant to any offender convicted in the
exercise of its criminal jurisdiction by any Court of Justice within Our
territories in India a pardon, either free or subject to such lawful con-
ditions as to him may seem fit.

3. And We do hereby delegate to Our Governor-General authority and
power to grant in Our name or on Our behalf Commissions in Our Naval
Forces, Our Indian Land Forces and Our Indian Air Force.

4. After Part XIII of, and the Ninth Schedule to, the Act shall have
ceased to have effect, one of Our Principal Secretaries of State may grant
to Our Governor-General once during his term of office leave of absence
from India for urgent reasons of public interest or of health or of private
affairs. Such leave of absence shall not exceed four months in duration,
unless Our Secretary of State shall see fit to extend the period so granted,
in which case he shall set forth the reasons for the extension in a minute to
be signed by himself and laid before both Houses of Parliament.

5. And We do hereby require and command all Our officers, civil and
military, and all other the inhabitants of Our territories in India to be
obedient, aiding and assisting unto Our said Governor-General.

6. And We do hereby reserve to Ourselves, Our heirs and successors,
full power and authority from time to time to revoke, alter or amend
these Our Letters Patent as to Us or them shall seem meet.

7. Our Governor-General shall make public in India these Our Letters
Patent in such manner as to him may seem fit.

IN WITNESS whereof We have caused these Our Letters to be made
Patent. Witness Ourselves at Westminster the Fifth day of March in the
First year of Our Reign.

By Warrant under the King's Sign Manual,

Schuster.

III

LETTERS PATENT passed under the Great Seal of the Realm constituting the Office of the Crown Representative.

Dated 5th March, 1937.

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and of the British Dominions beyond the Seas King Defender of the Faith Emperor of India:

To all to whom these Presents shall come

GREETING:

WHEREAS by Section 3 (2) of the Government of India Act, 1935 (hereinafter referred to as "the Act"), it is enacted that our Representative for the exercise of our functions in Our relations with Indian States is appointed by Us by a Commission under Our Sign Manual:

AND WHEREAS by the Act it is further enacted that any powers connected with the exercise of Our functions in Our relations with Indian States shall in India, if not exercised by Us, be exercised only by, or by persons acting under the authority of, Our said Representative, and that Our said Representative has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under the Act on Our Governor-General) as we may be pleased to assign to him:

AND WHEREAS we are minded to make permanent provision for the Office of Our Representative:

NOW THEREFORE, we do declare Our Will and Pleasure to be as follows:—

1. We do hereby constitute, order and declare that there shall be a Representative of the Crown for the exercise of Our functions in Our relations with Indian States, hereinafter referred to as "Our Representative".

2. The person who is for the time being Our Governor-General or acting as Our Governor-General shall be also Our Representative.

3. And we do hereby authorise and empower Our Representative to exercise in India on Our behalf all powers and jurisdiction which have heretofore been exercisable in relation to Indian States on Our behalf by the Governor-General of India or the Governor-General in Council, whether with or without the sanction of the Secretary of State in Council of India, except so much of those powers and that jurisdiction as we may from time to time determine to retain in our own hands or for which we may make other provision, and so much as may hereafter be vested, in the case of a Federated State, in our Governor-General and other Federal authorities under the Act by virtue of the Instrument of Accession of the State.

4. Our Secretary of State may, to such extent as he may deem expedient, himself appoint persons to be employed in connection with the exercise of Our functions in Our relations with Indian States and Our Representative shall employ all persons so appointed. But subject as aforesaid and subject also to any directions which Our Secretary of State may signify to him in regard to the employment of any class of persons, Our Representative may on Our behalf employ or appoint all such officers and

servants as may seem to him, necessary for the due performance of his functions.

Our Representative may also by writing under his hand authorise the recruitment outside India and the appointment in his name by the person so authorised of any such officers as he may think expedient.

Further, Our Representative may empower authorities in India subordinate to him to exercise such of his powers and discharge such duties as he may from time to time deem fit.

5. Our Representative may further regulate the conditions of service of all officers and servants employed or appointed by him, or by authorities subordinate to him, subject, however, to the provisions of the Act in the case of persons wholly or mainly employed immediately before the commencement of Part III thereof in connexion with the exercise of Our functions in Our relations with Indian States.

6. We do further authorise and empower our Representative on Our behalf to purchase or acquire property whether within or without India for the purposes of the exercise of Our functions in Our relations with Indian States and to sell or to dispose of any property of any property for the time being vested in Us for those purposes and to make either himself or through such persons as he may authorise, any contract, whether with or without India, for those purposes.

7. Our Representative shall in the exercise of the powers and authorities conferred upon him by the Act and by these Letters Patent comply with any instructions which We may from time to time issue to him under Our sign Manual and shall further be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, Our Secretary of State.

8. And it is Our will and Pleasure that the provisions contained in certain Letters Patent under the Great Seal bearing date at Westminster the Fifth day of March, 1937, making provision for the Office of Our Governor-General for the grant of leave to Our Governor-General shall be taken as applying also to our Representative, and that pending the coming into operation of that provision any Orders passed under the Act for or in connection with the grant of leave to Our Governor-General shall be taken as applying to Our Representative.

9. And we do hereby require and command all Our Officers, civil and military, and all other the inhabitants of our territories in India to be aiding and assisting unto Our Representative.

10. And We do hereby reserve to Ourselves, Our heirs and successors full power and authority from time to time to revoke, alter or amend these Our Letters Patent as to Us or them shall seem meet.

11. Our Representative shall make public in India these Our Letters Patent in such manner as to him may seem fit

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves, at Westminster the Fifth day of March in the First Year of Our Reign.

By Warrant under the King's Sign Manual,
Sd. Schuster

IV

COMMISSION passed under the Royal Sign Manual and Signet appointing The Most Honourable the Marquess of Linlithgow, K.T., G.M.S.I., G.M.I.E., O.B.E., to be Governor-General of India and Crown's Representative.

Dated 8th March, 1937.

GEORGE R.I.

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and of the British Dominions beyond the Seas, King Defender of the Faith, Emperor of India:

To Our Right Trusty and Right Well Beloved Cousin and Counsellor VICTOR ALEXANDER JOHN HOPE MARQUESS OF LINLITHGOW, Knight of the Most Ancient and Most Noble Order of the Thistle Grand Master and First and Principal Knight of Our Most Exalted Order of the Star of India Grand Master and First and Principal Knight Grand Commander of Our Most Eminent Order of the Indian Empire Officer of Our Most Excellent Order of the British Empire.

GREETING:

I. We do by this Our Commission under Our Sign Manual appoint you the said Victor Alexander John Hope Marquess of Linlithgow to be during Our pleasure Our Governor-General of India and Our Representative for the exercise of Our functions in Our relations with Indian States with all the powers, rights, privileges and advantages to the said offices belonging or appertaining.

II. And We do hereby declare that so long as you shall hold the said offices you shall while in India bear in addition to the styles and titles of the said offices the style and title of "Our Viceroy".

III. And We do hereby authorise, empower and command you to exercise and perform all and singular the powers and directions contained in certain Letters Patent under the Great Seal bearing date at Westminster the Fifth day of March, 1937, making provision for the offices of Governor-General and of Our Representative or in any other Letters Patent adding to, amending or substituted for the same according to such Orders and Instructions as Our Governor-General and Our Representative for the time being have already received or as you may hereafter receive from Us or from one of Our Principal Secretaries of State.

IV. And further We do hereby appoint that this Our present Commission shall supersede the Warrant under the Sign Manual of His former Majesty King Edward the Eighth bearing date the Tenth day of March 1936 appointing you the said Victor Alexander John Hope Marquess of Linlithgow to be Our Governor-General of India.

V. And We do hereby command all and singular Our officers and loving subjects in India and all others whom it may concern to take due notice hereof and to give their ready obedience accordingly.

GIVEN at Our Court at Buckingham Palace the Eighth day of March 1937 in the First year of Our Reign.

By His Majesty's Command.

Zetland.

No. F. 5[11]37-G. (A):—Commission appointing the Most Honourable the Marquess of Linlithgow, K.T., G.M.S.I., G.M.I.E., O.B.E., to be Governor-General of India and Crown's Representative.

V

INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor-General of India.

Dated 8th March, 1937.

GEORGE R.I.

INSTRUCTIONS TO OUR GOVERNOR-GENERAL OF INDIA.

GIVEN at Our Court at Buckingham Palace the Eighth day of March, 1937, in the First year of Our Reign.

WHEREAS by Letters Patent bearing date the fifth day of March Nineteen hundred and thirty-seven. We have made permanent provision for the office of Governor-General of India:

AND WHEREAS by those Letters Patent and by the Government of India Act, 1935 (hereinafter called "the Act") certain powers, functions and authority for the Government of India are declared to be vested in the Governor-General:

AND WHEREAS His late Majesty King George V did before the enactment of the Act issue certain Instructions under His Royal Sign Manual to Our said Governor-General bearing date the fifteenth day of March nineteen hundred and twenty-one, and did subsequently amend the same:

AND WHEREAS the impending commencement of Part III of the Act has rendered it necessary to revoke the said Instructions:

AND WHEREAS without prejudice to the provision in the Act that our Governor-General shall be under the general control of and comply with such particular directions, if any, as may from time to time be given by Our Secretary of State and to the duty of Our Governor-General to give effect to any Instructions so received, We are minded to make general provision regarding the manner in which during the operation of the provisions of Part XIII of the Act Our said Governor-General shall execute all things which according to the Act and the said Letters Patent belong to his office and to the trust which we have reposed in him:

NOW, THEREFORE, We do by these Our Instructions under Our Royal Sign Manual hereby revoke the aforesaid Instructions and declare Our pleasure to be as follows:—

A.—INTRODUCTORY.

I. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being acting as Governor-General according to the provisions of the Act.

II. Our Governor-General shall, with all due solemnity, cause Our Commission under Our Royal Sign Manual appointing him to be read and published in the presence of the Chief Justice of India for the time being or, in his absence, other Judge of the Federal Court, and of so many of the members of the Executive Council of Our Governor-General as may conveniently be assembled.

III. Our Governor-General shall take the oath of allegiance and the oath for the due execution of the office of Our Governor-General of India

and for the due and impartial administration of justice, in the form hereto appended, which oaths the said Chief Justice or, in his absence, any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General by himself or by any other person to be appointed by him in that behalf to administer to every person appointed by Us or by the Governor-General in Council to be a member of the Governor-General's Executive Council and to every person appointed by him to be a Chief Commissioner the oaths of allegiance and of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. The provisions of the last four preceding paragraphs shall not apply to any person holding office at the date of the commencement of Part III of the Act.

B—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE GOVERNOR-GENERAL IN COUNCIL.

VII. It is Our will and pleasure that Our Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature so far as the same shall appear to him to be just and reasonable; and shall so order the administration of his government as to further the policy of the Act for its conversion into a Federation of all India.

C—IN REGARD TO RELATIONS BETWEEN THE GOVERNOR-GENERAL IN COUNCIL AND THE PROVINCES

VIII. Whereas it is expedient for the common good of British India that the authority of Our Governor-General in Council and of the Indian Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the Act that the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policy:

And whereas in the interest of the harmonious co-operation of the several members of the body politic, the Act has empowered Our Governor-General to exercise, at his discretion, certain powers affecting the relations between his Government and the Provinces:

It is Our will and pleasure that Our Governor-General in the exercise of these powers should give unbiased consideration as well to the views of the Governments of the Provinces as to those of his own Government whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province for the purpose of securing that the executive authority of the Governor-General in Council is not impeded or prejudiced, or his power to determine whether Provincial law or Central law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

IX. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between his

Government and the Provinces and between the Provinces themselves. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Provincial Governments in the maintenance of such Central agencies and institutions for research as may serve to assist the conduct by Provincial Governments of their own affairs.

X. In particular We require Our Governor-General before giving his previous sanction to any legislative proposal which it is proposed to introduce in the Indian Legislature for the imposition or variation of taxes or duties by which the revenues of the provincial Governments are or may be directly affected or for varying the meaning of the expression "agricultural income," or for alteration of the principles on which under the provisions of the Act monies are or may be distributed to the Provinces, to ascertain by the method which appears to him best suited to the circumstances of each case the views of those Governments upon the proposal.

XI. Before granting his previous sanction to the introduction into the Indian Legislature of any Bill or amendment wherein it is proposed to authorise the Governor-General in Council to give directions to a Province as to the carrying into execution in that Province of any Act of the Indian Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the Act, it is Our will and pleasure that Our Governor-General shall take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure which involve the imposition of expenditure upon the revenues of the Provinces.

XII. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of an Act of the Indian Legislature, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

D.—MATTERS AFFECTING THE LEGISLATURE.

XIII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor-General shall not assent in Our name, to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which those Courts are by the Act designed to fill;

(c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V, or section 299 of the Act;

(d) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement.

XIV. It is further Our will and pleasure that in pursuance of the Agreement made between Us and His Exalted Highness the Nizam of

Hyderabad as contemplated in Part III of the Act, Our Governor-General in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Bill in its application to Berar has been given by virtue of the Agreement between Us and His Exalted Highness the Nizam.

E.—GENERAL.

XV. And generally Our Governor-General shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in public life; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XVI. And finally it is Our will and pleasure that our Governor-General should so exercise the trust reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among our Dominions.

XVII. And We do hereby charge Our Governor-General to communicate these Our Instructions to the Members of his Executive Council and to publish the same in such manner as he may think fit.

APPENDIX.

FORM OF OATH OF ALLEGIANCE.

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, Emperor of India, His Heirs and Successors, according to Law.

So help me God.

FORM OF OATH OF OFFICE.

I, _____, do swear that I will well and truly serve Our Sovereign, King George the Sixth, Emperor of India, in the Office of _____, and that I will do **right to all manner of people** after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR EXECUTIVE COUNCILLORS.

I, _____, do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a member of the Governor-General's Executive Council, except as may be required for the due discharge of my duties as such member, or as may be specially permitted by the Governor-General.

So help me God.

E. CONRAN-SMITH,

Joint Secy. to the Govt. of India.

VI

LETTERS PATENT passed under the Great Seal of the Realm
Constituting the Office of Governor of Madras.

Dated 5th March, 1937.

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and of the
British Dominions beyond the Seas King Defender of the Faith
Emperor of India:

To all to whom these presents shall come

GREETING:

WHEREAS by sections 46 and 48 of the Government of India Act, 1935,
it is enacted that the Governor of Madras is appointed by Us by a Commis-
sion under Our Sign Manual:

AND WHEREAS provision is made in section 304 of the said Act for the
appointment by Us of persons to act as the Governor of a Province during
the absence of the Governor from India:

AND WHEREAS We are minded to make provision for the office of Our
Governor of Madras:

NOW, THEREFORE, We do declare Our Will and Pleasure to be as
follows:—

1. We do hereby constitute, order and declare that there shall be a
Governor of Madras.

2. One of Our Principal Secretaries of State, may grant to Our
Governor of Madras once during his term of office leave of absence from
India for urgent reasons of health or of private affairs. Such leave of
absence shall not exceed four months in duration unless Our Secretary of
State shall see fit to extend the period so granted, in which case he shall
set forth the reasons for the extension in a minute to be signed by himself
and laid before both Houses of Parliament.

3. And We do hereby require and command all Our officers, civil and
military, and all other the inhabitants of Madras to be aiding and assisting
unto Our said Governor.

4. And We do hereby reserve to Ourselves, Our heirs and successors,
full power and authority from time to time to revoke, alter or amend these
Our Letters Patent as to Us or them shall seem meet.

IN WITNESS whereof We have caused these Our Letters to be made
Patent. Witness Ourself at Westminster the Fifth day of March in the
First year of our Reign.

BY WARRANT UNDER THE KING'S SIGN MANUAL

SCHUSTER.

Note - Letters Patent constituting the office of Governor are the same
for all Provinces

Public Department (Reforms). Fort St. George, April 1, 1937. [G. O. No. 638,
Public (Reforms)].

VII

INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor of Madras.

Dated 8th March, 1937.

GEORGE R.I.

INSTRUCTIONS to Our Governor for the time being of Madras

GIVEN at Our Court at Buckingham Palace the Eighth day of March, 1937 in the First year of our Reign

WHEREAS by Letters Patent bearing date the Fifth day of March, Nineteen hundred and thirty-seven, We have made permanent provision for the Office of Governor of Madras:

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on the second day of August, Nineteen hundred and thirty-five and entitled the Government of India Act, 1935 (hereinafter called "the Act"), certain powers, functions and authority for the government of the Province of Madras are declared to be vested in the Governor as Our Representative:

AND WHEREAS, without prejudice to the provision in the Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the Act and the said Letters Patent, belong to his Office, and to the trust which We have reposed in him:

AND WHEREAS a draft of these Instructions has been laid before Parliament in accordance with the provisions of sub-section (1) of section 53 of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be issued in the terms of these Instructions:

NOW, THEREFORE, We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:--

A.—INTRODUCTORY

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being acting as Governor according to the provisions of the Act

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of Madras, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to

every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE PROVINCE.

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers. unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modifica-

tion of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

C.—MATTERS AFFECTING THE LEGISLATURE.

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;
- (c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 29^o of the Act;
- (d) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D.—GENERAL.

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

Note.—The instrument of Instructions to other Governors is the same and has not therefore been published.

APPENDIX.

FORM OF OATH OF ALLEGIANCE.

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, Emperor of India, His Heirs and Successors, according to law.

So help me God.

FORM OF OATH OF OFFICE.

I, _____, do swear that I will well and truly serve Our Sovereign, King George the Sixth, Emperor of India in the Office of _____, and that I will do right to all manner of people after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR MINISTERS.

I, _____, do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in Madras, except as may be required for the due discharge of my duties as such Minister or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion.

So help me God.

ORDERS IN COUNCIL.

(1)

THE GOVERNMENT OF INDIA (EXCLUDED AND PARTIALLY EXCLUDED AREAS) ORDER, 1936.

AT THE COURT AT BUCKINGHAM PALACE.

The 3rd day of March, 1936.

Present,

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by sub-section (1) of section ninety-one of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act"), His Majesty in Council is empowered to declare what areas are to be excluded areas and partially excluded areas within the meaning of the Act:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section 309 of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to Order, and it is hereby ordered as follows:—

1. This Order may be cited as THE GOVERNMENT OF INDIA (EXCLUDED AND PARTIALLY EXCLUDED AREAS) ORDER, 1936.

2. The areas specified in Part I of the Schedule to this Order shall be the excluded areas, and the areas specified in Part II of that Schedule the partially excluded areas, within the meaning of the Act.

3. Any reference in the said Schedule to any District, administrative area or estate shall be construed as a reference to that District, area or estate as existing on the first day of January, nineteen hundred and thirty-six.

M. P. A. Hankey.

SCHEDULE.

PART I.—EXCLUDED AREAS.

MADRAS.

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL.

The Chittagong Hill Tracts.

THE PUNJAB.

Spti and Lahaul in the Kangra District.

ASSAM.

The North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts.

The Naga Hills District.

The Lushai Hills District.

The North Cachar Hills Subdivision of the Cachar District.

THE NORTH-WEST FRONTIER PROVINCE.

Upper Tanawal in the Hazara District.

PART II.—PARTIALLY EXCLUDED AREAS.

MADRAS.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BOMBAY.

In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal; and the villages belonging to the following Mehwasai Chiefs, namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walvi of Gaohali, (5) the Wassawa of Chukli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Petha of the Nasik District.

The Dahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District

The Dohad Taluk and the Jhalod Mahal of the Broach and Pauch Mahals District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardji, Nalitabari, Halvaghat, Durgapur and Kalmakanda police stations of the Mymensingh District.

THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District

The portion of the Mirzapur District south of the Kaimur range.

BIHAR.

The Chota Nagpur Division.

The Santal Parganas District.

THE CENTRAL PROVINCES AND BERAR.

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangli, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Murauda and Potegaon Zamindaris in the Garchioli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partapgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra; Kenda, Matin, Lapha, Uprora, Chhuri and Korha Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ASSAM.

The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

The British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment.

ORISSA.

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

(2)
**THE GOVERNMENT OF INDIA (CONSTITUTION OF
ORISSA) ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,

The 3rd day of March, 1936.

Present,

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS it is provided by sub-section (1) of section two hundred and eighty-nine of the Government of India Act, 1935 (hereinafter in this Order referred to as "the Act"), that, as from such date as His Majesty may by Order in Council appoint, certain parts of the Province of Bihar and Orissa, the Presidency of Madras and the Central Provinces shall be separated from that Presidency and those Provinces and shall form a Governor's Province to be known as the Province of Orissa, and that thereafter the Province of Bihar and Orissa shall be known as the Province of Bihar:

AND WHEREAS by sub-section (2) of the said section His Majesty is empowered by Order in Council to make other provision in connection with the establishment of the Province of Orissa:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

PART I.

INTRODUCTORY.

1. This Order may be cited as THE GOVERNMENT OF INDIA (CONSTITUTION OF ORISSA) ORDER, 1936.

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

PART II.

DEFINITION OF ORISSA AND DATE OF SEPARATION.

3. (1) The Province of Orissa (hereafter in this Order referred to as "Orissa") shall consist of the areas specified in Part I of the First Schedule to this Order, and accordingly, as from the date of the coming into operation of the provisions of sub-section (1) of section two hundred and eighty-nine of the Act relating to the formation of the Province of Orissa and the re-naming of the Province of Bihar and Orissa, those areas shall cease to form part of the Province of Bihar and Orissa, the Presidency of Madras and the Central Provinces respectively.

(2) The external land boundaries of Orissa shall be as described in Part II of the said Schedule.

(3) If any question arises with respect to the boundaries, as existing at the date of this Order, of any district, Agency, taluk, village, estate, forest or other area referred to in the said Schedule or otherwise with respect to the delimitation of the boundary of Orissa, that question shall be referred to the Governor-General, whose decision thereon shall be final.

4. (1) The date on which the said provisions are to come into operation shall be the first day of April, nineteen hundred and thirty-six.

(2) The said date is hereafter in this Order referred to as "the appointed day," and the period beginning on the appointed day and ending immediately before the commencement of Part III of the Act is hereafter in this Order referred to as "the transitional period".

PART III.

PROVISIONS WITH RESPECT TO THE TRANSITIONAL PERIOD.

Duration.

5. The provisions of this Part of this Order shall have effect with respect to the transitional period.

Administration.

6. Save as provided by this Order, the Government of India Act and any Rules made thereunder shall apply in relation to Orissa as they apply in relation to other Governors' Provinces.

7. The Governor shall be appointed by His Majesty by warrant under the Royal Sign Manual, after consultation with the Governor-General, and there shall be paid to him an annual salary of sixty-six thousand rupees and such allowances as the Secretary of State in Council may determine.

8. (1) Orissa shall be governed in relation to all provincial subjects by the Governor, and so much of the Government of India Act and the Rules made thereunder as relates to the classification of provincial subjects as reserved and transferred shall not apply to Orissa.

(2) The Governor shall have no executive council and any reference in Part IV of the Devolution Rules to the Governor in Council shall be construed as a reference to the Governor.

(3) The Governor shall be deemed for all purposes to be the local government of Orissa.

9. (1) There shall be an advisory council consisting of not more than twenty members to be nominated by the Governor and of those persons not more than three shall be officials.

(2) The council may advise on all such matters as the Governor may refer to them.

(3) The business of the council shall be conducted by the council or its committees in such manner, and the council and its committees shall be presided over by such persons, as the Governor may direct.

(4) There shall be paid to the members of the Council such allowances as the Governor-General in Council may determine.

(5) So much of the Government of India Act and the Rules made thereunder as relates to legislative councils shall not apply to Orissa.

10. (1) The Governor may, if he thinks fit, appoint one or more members of the advisory council to assist him in such manner as he thinks fit, and there shall be paid to any person so appointed such salary and allowances as may be fixed by the Governor-General in Council.

(2) Any such appointment shall be terminable at the pleasure of the Governor.

Legislation.

11. The provisions of section seventy-one of the Government of India Act (except sub-section (4) thereof) shall apply to the whole of Orissa and regulations may be made thereunder accordingly.

Finance.

12. (1) The Governor shall, before or as soon as may be after the beginning of each financial year falling wholly or partly within the transitional period, cause a statement of the estimated annual receipts and expenditure of Orissa for that year together with proposals for appropriation of the revenues of Orissa to be laid before the advisory council for general discussion, but no item shall be submitted to the vote of the council; and after the discussion the Governor shall authenticate under appropriate heads the amounts of the appropriations, and thereupon expenditure may be undertaken accordingly.

(2) During any period in any financial year preceding the authentication aforesaid expenditure for that year may be undertaken in respect of such matters and within such limits as the Governor may from time to time by written order determine.

13. If in any financial year further expenditure from the revenues of Orissa becomes necessary over and above the expenditure authorised under the last preceding paragraph for that year, the Governor shall cause a supplementary statement showing the estimated amount of that expenditure to be laid before the advisory council, and the provisions of that paragraph shall apply with any necessary modifications with respect to that statement and that expenditure.

14. Subject to such instructions as the Governor-General in Council may issue, the Governor shall make such arrangements as he deems necessary for the control of expenditure out of the revenues of Orissa, and Part III of the Devolution Rules (which relates to finance departments) shall not apply to Orissa.

15. (1) In the table of annual assignments for famine relief set out in paragraph one of Schedule IV to the Devolution Rules, for the entry—

“Bihar and Orissa.....3,00,000”

there shall be substituted the following entry—

“Bihar.....2,00,000”

and the following entry shall be added—

“Orissa.....1,25,000”

(2) In the table of accumulated totals set out in paragraph five of the said Schedule IV, for the entry—

“Bihar and Orissa.....15,00,000”

there shall be substituted the following entry—

“Bihar.....10,00,000”

and the following entry shall be added—

“Orissa.....10,00,000”

16. There shall be a Revenue Commissioner for Orissa, who shall discharge such functions as the Governor may, with the previous sanction of the Governor-General in Council, from time to time assign to him, and any provision in force immediately before the appointed day contained in or made under any enactment shall have effect accordingly:

Provided that any revenue appeals pending immediately before the appointed day before the Bihar and Orissa Board of Revenue shall be con-

tinued and disposed of as if the Division of Orissa had continued to be part of the Province of Bihar and Orissa.

Other Matters.

17. The Governor may by notification in the local official gazette direct what officer (other than the Revenue Commissioner) is to exercise in Orissa any functions exercisable by virtue of any provision in force immediately before the appointed day contained in or made under any enactment, and any such provision shall have effect accordingly.

18. The provisions of the Second Schedule to this Order shall have effect with respect to the legislative councils of the Governors' Provinces from which areas are separated by this Order.

PART IV.

MISCELLANEOUS.

19. (1) The High Court at Patna shall be the High Court for the whole of Orissa and shall—

- (a) in respect of the areas transferred to Orissa from the Province of Bihar and Orissa, retain such jurisdiction as it had immediately before the appointed day;
 - (b) in respect of such areas in Orissa as, immediately before the appointed day, were under the jurisdiction of any other High Court, have such jurisdiction as that other High Court had immediately before the appointed day;
- and the jurisdiction of any such other High Court in any such area in any matter in which jurisdiction is by this paragraph given to the High Court at Patna shall **cease**.

(2) Notwithstanding anything in sub-paragraph (1) of this paragraph—

- (a) all proceedings pending in any such other High Court as aforesaid on the appointed day shall be continued in that Court;
- (b) all proceedings with reference to any decree or order passed or **made by any such other High Court** shall, after the appointed day, be instituted in that High Court and not in the High Court at Patna:

Provided that any such other High Court as aforesaid may, if it appears to it that, having regard to any alteration of the boundaries affected by this Order, any case pending therein on the appointed day ought to be transferred to the High Court at Patna, direct that that case shall be so transferred, and it shall be transferred accordingly.

(3) The Letters Patent of the High Courts which immediately before the appointed day had jurisdiction in any part of Orissa shall be read with and construed as modified by this Order.

20. Subject to the provisions of the last preceding paragraph, the Governor-General in Council may, after consulting the local governments and High Courts concerned, give such directions as he thinks proper as to the disposal of any cases pending on, or shortly before, the appointed day, in any Court acting for an area, any part of which is transferred by this Order to Orissa, and as to the Courts in which proceedings by way of appeal or revision are to lie in cases decided by any such Courts before the appointed day.

21. The Council of State Electoral Rules and the Legislative Assembly Electoral Rules and any Regulations applied thereby shall, until amended by competent authority, have effect as if Bihar and Orissa continued to be one Province with the same boundaries as immediately before

the appointed day, and as if the boundaries of the Presidency of Madras and of the Central Provinces had not been altered:

Provided that anything required by the said Rules or Regulations to be done by the Governor, the local government or officials of Bihar and Orissa, of Madras or of the Central Provinces shall be done by such Governor, local government or officials as the Governor-General in Council may direct.

22. (1) There shall be an apportionment of assets and liabilities between Orissa and the Governors' Provinces from which areas are separated by this Order, and that apportionment shall be made in accordance with the provisions contained in the Third Schedule to this Order.

(2) Any dispute arising under the said provisions shall be referred to and finally decided by the Secretary of State in Council or, after the commencement of Part III of the Act, the Secretary of State.

23. (1) Such persons serving under the Crown immediately before the appointed day in, or in connection with the affairs of, the Presidency of Madras, the Province of Bihar and Orissa or the Central Provinces, as may be determined by agreement between the Governments concerned, or, in default of agreement, by the Governor-General in Council, may, notwithstanding anything in the terms of their appointments or their conditions of service, be required to serve in, or in connection with the affairs of Orissa.

(2) The power conferred by this paragraph to require a person to serve in, or in connection with the affairs of, Orissa shall be exercised subject to any conditions for the protection of the persons concerned prescribed by the Governor-General in Council, either generally or in relation to particular persons or classes of persons.

24. Any appointment made under Part III of this Order of a person to be Governor of Orissa shall as from the commencement of Part III of the Act have effect as if it were an appointment made under section 48 thereof.

25. Until other provision is made under the Act, any officer who immediately before the commencement of Part III of the Act was exercising any functions by virtue of anything done under Part III of this Order shall continue to exercise those functions.

26. The provisions of this Order shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that that enactment is expressed to apply or extend to the territories for the time being under a particular administration:

Provided that nothing in this paragraph shall be construed as affecting the power to make regulations for Orissa under section 71 of the Government of India Act as applied by this Order.

27. For the purpose of facilitating the application in relation to Orissa of any enactment, notification, order, scheme, rule, form or byelaw passed, issued or made before the appointed day, any Court may, subject to any express provision of this Order, construe the enactment, notification, order, scheme, rule, form or byelaw with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Court.

M. P. A. Hankey.

FIRST SCHEDULE,
PART I.

AREAS COMPRISED IN THE PROVINCE OF ORISSA.

1. That portion of the Province of Bihar and Orissa which is at the date of this Order known as the Orissa Division thereof.
2. Areas transferred from the Presidency of Madras:—
 - (i) The Ganjam Agency Tracts;
 - (ii) The following areas in the non-Agency portion of the Ganjam district, *viz*, the taluks of Ghumsur, Aska, Surda, Kodala and Chatrapur, and so much of the taluks of Ichapur and Berhampur as lies to the north and west of the line described in Part II of this schedule;
 - (iii) So much of the Parlakimedi Estate as lies to the north and east of the said line; and
 - (iv) The following areas in the Vizagapatam district, that is to say, the Jeypore (Impartible) Estate and so much of the Pottangi taluk as is not included in that estate.
3. Areas transferred from the Central Provinces
 - (i) The Khariar Zamindari in the Raipur district; and
 - (ii) The Padampur Tract in the Bilaspur district, that is to say, the detached portion of that district consisting of fifty-four villages of the Chandrapur Padampur estate and also of the following 7 villages, namely, Kuhakunda, Badimal, Panchpudgia (Soda), Barhampura (Malguzari), Panchpuragia (Palsala), Jogni, and Thakurpali (Jogni).

PART II

THE LAND BOUNDARY OF ORISSA

A. The main portion of Orissa

The boundary follows a line which starts in latitude 19° 5' (approximate), at the point on the coast of the Bay of Bengal where the boundary of Patisonnapuram village, after following the coast from north to south, turns inland. From that point it runs along the existing village boundary (so as to include the village in Orissa) until it meets the boundary of the Berhampur taluk at a sharp re-entrant angle in that boundary; thence along the northern arm of that taluk boundary until it meets the south-eastern boundary of Chikati estate; thence along that estate boundary westwards and southwards until it again meets the boundary of the Berhampur taluk; thence along that taluk boundary south-westwards until it meets the boundary of Jalantia estate; thence along that estate boundary westwards until it meets the boundary of the Ganjam Agency; thence south-westwards along the boundary of that Agency until it meets the boundary of the Parlakimedi Estate; thence eastwards and southwards along that boundary to the point where the southern boundary of Peddahamsa village leaves the estate boundary; thence through the estate to the south-west corner of the village of Pedda Murangi along existing village boundaries so as to include in Orissa the villages of Peddahamsa, Labonyogoda, Baduobada, Mamidipalle and Pedda Murangi (including Lavanya Kotta Reserved Forest); from the south-west corner of Pedda Murangi along the west boundary of the village of Mara, the north-western forest boundary of Banapuram Reserved Forest, the northern boundary of the village of Bagadalla and the northern boundary of the village of Surjam to the most northerly point (approximately) of the last-mentioned boundary; thence in a northerly direction for a distance of about half a mile across the saddle in the hills to the south-eastern corner of the village of Kosali; thence to the point where the south-west corner of the village of Omora meets the Mahendratana river along existing village boundaries so as to include in Orissa the villages of Kosali, Jangalapadu, Saradapuram, Agarakhundi, Bhinnola, Dhamdigam and Omora; from the last-mentioned point in a westerly direction along the middle line of that river to the south-west corner of the village of Kaviti Khaspa; thence to the point where the western boundary of the village of Singupuram Agraharam meets the southern forest boundary of the Kurlanda Reserved Forest along existing village boundaries so as to include in Orissa the villages of Kaviti Khaspa, Cheruvudigava, Venkatapuram; Peddahinga (I), Mukkidipadu (I), Ranipeta; Siddamanugu (I) and Singupuram Agraharam; thence along the southern forest boundary of Kurlanda Reserved Forest until it meets the boundary of the village of Minigam; thence to the point where the eastern boundary of the village of Kinigam meets the Vamsadhara river along existing village boundaries so as to include in Orissa Kurlanda Reserved Forest, the villages of Minigam, Sitapuram, Kharada, Vistala, Hadobhangi, Jayapuram, Nilapuram and Kinigam; thence in a north-westerly direction along the middle line of the

river until it meets the boundary of the Ganjam district; thence along that district boundary, which is there the boundary also of the Jeypore (Impartible) Estate; westwards and southwards until that estate boundary diverges from the district boundary; thence along that estate boundary (so as to include the estate in Orissa) until it meets the eastern boundary of the Pattangi taluk; thence along that taluk boundary (so as to include the taluk in Orissa) until it again meets the boundary of the Jeypore (Impartible) Estate; thence along that estate boundary until it meets the boundary of the Madras Presidency; thence northwards, south-eastwards and again northwards along the Presidency boundary until it meets the boundary of the south-western portion of the Angul District, thence along the west, north and east boundaries of that portion of that district until it again meets the Presidency boundary at a point where that boundary is also the boundary of the Eastern States Agency; thence along the boundary of that Agency until it meets the boundary of the Bengal Presidency; and thence in a south-easterly direction along the Presidency boundary to the sea.

B. The detached portion of the Province formed by the part of the existing Angul district of the Province of Bihar and Orissa which is wholly surrounded by Indian States

The boundary follows the existing boundary.

C. The detached portion of the Province formed by the Sambalpur district of the Province of Bihar and Orissa and the two areas transferred from the Central Provinces.

The boundary follows the existing boundaries.

SECOND SCHEDULE.

PROVISIONS WITH RESPECT TO THE LEGISLATIVE COUNCILS OF BIHAR,
MADRAS AND THE CENTRAL PROVINCES.

General.

1. (1) In this Schedule—

the expression "Province of Bihar" means the Province which is known at the date of this Order as Bihar and Orissa but as from the appointed day is to be known as Bihar;

the expression "Council" means the Legislative Council of the Province of Bihar, of the Presidency of Madras, or of the Central Provinces, as the context may require;

the expression "transferred area" means an area separated by or under section two hundred and eighty nine of the Act from the Province of Bihar, the Presidency of Madras or the Central Provinces and the expression "transfer of area" shall be construed accordingly.

(2) For the purposes of this Schedule a constituency shall be deemed to be altered if its extent is reduced by a transfer of area, or if the qualification of electors for the constituency depends upon the residence of a person or the situation of property within, or some other fact related to, a Province, constituency or other limits of which the extent is so reduced.

2. A transferred area shall cease to form part of any constituency returning a member to sit in any Council.

3. Subject to the special provisions of this Order relating to Ganjam, a person who immediately before the appointed day was a member of a Council for any constituency which will on that day be altered shall continue to represent that constituency as if he had been elected to represent that constituency as altered, and shall, until the next dissolution of the Council, be deemed to have been, and to be, duly qualified to be so elected and to be a member for the constituency as altered.

4. If, by reason of the said special provisions or otherwise, a bye-election falls to be held for any altered constituency between the appointed day and the completion of the next general revision of the electoral roll for that constituency, a person shall not be entitled to vote or eligible for election by reason of his inclusion in a part of the roll which relates solely to a transferred area, but, save as aforesaid; any person shall be entitled to vote who would have been entitled to vote if the constituency had not been altered.

Special Provisions as to Bihar.

5. (1) On the appointed day—

(a) the constituencies mentioned in sub-paragraph (2) of this paragraph shall cease to be constituencies returning members to sit in the Council.

- (b) such two of the nominated members of the Council who are officials as the Governor may determine shall vacate their seats; and
- (c) the number of elected members of the Council shall be reduced by ten, the number of nominated members and the number of such members who may be officials shall each be reduced by two, and the total number of members shall be reduced by twelve

(2) The constituencies referred to in the last preceding paragraph are the following; namely:—Orissa Division (Non-Muhammadan Urban); Orissa Division (Muhammadan Rural); North Cuttack (Non-Muhammadan Rural); South Cuttack (Non-Muhammadan Rural), North Balasore (Non-Muhammadan Rural), South Balasore (Non-Muhammadan Rural), North Puri (Non-Muhammadan Rural), South Puri (Non-Muhammadan Rural), Sambalpur (Non-Muhammadan Rural), Orissa Division Landholders.

Special Provisions as to Madras.

6. (1) As from the appointed day, the constituency of Ganjam shall be represented on the Council by one member instead of by three members and the number of elected members of the Council and the total number of members thereof shall each be reduced by two.

(2) The persons who immediately before the appointed day are members for the said constituency shall vacate their seats on that day, and a by-election shall be held for the election of one member to represent that constituency:

Provided that, if immediately before the appointed day two of the three seats allotted to that constituency are vacant, the provisions of paragraph 3 shall apply to the person holding the other seat.

THIRD SCHEDULE.

PROVISIONS AS TO APPORTIONMENT.

PART I.

ADJUSTMENTS BETWEEN BIHAR AND ORISSA.

1. Subject to the provisions of this Part of this Schedule relating to unissued stores, all land, works, forests, buildings and contents of buildings shall remain the property of, or, as the case may be, pass to, the Province in which they are situated.

2. Arrears of taxes shall belong to the Province in which the taxed property is situate or the taxed transactions took place.

3. Of the outstanding Bihar and Orissa Irrigation Debt incurred before the first day of April, nineteen hundred and twenty-one, twenty-five million, six hundred and eighty-five thousand one hundred and thirty-six rupees shall be the debt of Orissa and the remainder shall be the debt of Bihar.

4. Any sums due on or after the appointed day in respect of loans made before the appointed day from the Provincial Loans Account shall belong to the Province in whose area the persons from whom the sums are due were resident on the appointed day.

5. Bihar shall retain the whole of the free provincial balance and the whole of the Famine Relief Fund, and Orissa shall, subject to the provisions of paragraph 4; have no claim on, or liability in respect of, the Provincial Loans Account.

6. Of the free balance standing to the credit of the Bihar and Orissa Road Fund, Orissa shall receive one-tenth and the residue shall be retained by Bihar:

Provided that sums already allocated on the appointed day to specific projects may be spent on those projects and shall not be deemed to form part of the free balance of the Fund.

7. Borrowed money unexpended on the appointed day together with the corresponding liability shall be divided between the two Provinces in such manner as may be mutually convenient to both.

8. Reserve funds shall be divided between the two Provinces according as the purposes of the funds are purposes of the one Province or the other.

9. If and in so far as any item in suspense is ultimately found to affect any capital head referred to in the foregoing paragraphs of this Part of this Schedule, it shall be dealt with in accordance with the provisions of the relevant paragraph.

10. Any substantial quantities of unissued stores of any class shall be divided between Orissa and Bihar in proportion to the indents for stores of that class made in the three years immediately preceding the appointed day for the Orissa Division, and the remainder of Bihar and Orissa, respectively.

11. (1) Subject to the adjustment mentioned in sub-paragraph (3) of this paragraph, liabilities in respect of pensions granted by Bihar and Orissa before the appointed day shall, in the case of pensions which, immediately before the appointed day, were being paid from treasuries in Orissa, be liabilities of Orissa, and in other cases be liabilities of Bihar.

(2) Subject to the said adjustment, liabilities in respect of pensions granted after the appointed day shall be liabilities of the Province granting the pension.

(3) There shall be computed for each month after the appointed day the total liability of each Province—

(a) in respect of pensions granted by Bihar and Orissa before the appointed day;

(b) in respect of so much of any pensions granted after the appointed day to or in respect of persons who remain available for service in both Provinces as is attributable to service before the appointed day, and Orissa shall pay to Bihar monthly the amount by which the total liability of Bihar for that month exceeds eighty-one per cent. of the total liability of both Provinces for that month.

(4) Any question as to how much of any pension is attributable to service before the appointed day shall be determined by comparing the length of the service of the officer in question before the appointed day with the length of his service after the appointed day.

(5) Nothing in this paragraph shall be taken as prohibiting the payment from treasuries in the one Province of pensions which are the liability of the other, and if any pensioners are so paid the necessary adjustments shall be made between the two Provinces.

12. (1) The provisions of this paragraph shall, for the twenty five years commencing on the appointed day, have effect with respect to Government hospitals and educational institutions in Bihar (including any therapeutic institute or reformatory school) which before the appointed day served both Bihar and Orissa.

(2) There shall be reserved for Orissa either—

(a) the specific number of places reserved for residents in Orissa immediately before the appointed day; or

(b) if a specific number of places was not so reserved, a number of places as near as may be equal to the average number of places filled by residents in Orissa during the three years immediately preceding the appointed day.

(3) The charge to be made for admittance to the places aforesaid shall be calculated on a cost basis, account being taken of the pensions which will ultimately be payable to and in respect of the staff, and of debt outstanding on the appointed day or incurred after the appointed day, but no account being otherwise taken of capital expenditure incurred before the appointed day.

Provided that the charge made for admittance to the said places shall in no case exceed that made in respect of other persons resident outside Bihar.

(4) If for any five consecutive years after the appointed day Orissa fails to fill any of the places so reserved, the right of Orissa to that place shall lapse.

PART II.

ADJUSTMENTS BETWEEN MADRAS AND ORISSA.

1 All land, works, forests, buildings and contents of buildings in a transferred area shall pass to Orissa.

2 Arrears of taxes in respect of property or transactions in a transferred area shall belong to Orissa.

3. Orissa shall assume, and Madras shall be relieved from, liability for four million, seven hundred and seven thousand and eight rupees of the outstanding Madras Irrigation Debt incurred before the first day of April, nineteen hundred and twenty-one.

4 Orissa shall assume, and Madras shall be relieved from, liability for so much of the outstanding loan debt as was contracted for the construction of a bridge over the Kolab River in the financial year ending on the last day of March, nineteen hundred and twenty-five.

5. Any sums due on or after the appointed day in respect of loans made before the appointed day from the Provincial Loans Account shall belong to the Province in whose area the persons from whom the sums are due were resident on the appointed day.

6. Borrowed money unexpended on the appointed day together with the corresponding liability shall be divided between the two Provinces in such manner as may be mutually convenient to both.

7. Reserve funds shall be divided between the two Provinces according as the purposes of the funds are purposes of the one Province or the other.

8. If and in so far as any item in suspense is ultimately found to affect any capital head referred to in the foregoing paragraphs of this Part of this Schedule it shall be dealt with in accordance with the provisions of the relevant paragraph.

9. (1) Liabilities in respect of pensions shall—

(a) in the case of pensions granted by Madras before the appointed day which immediately before the appointed day were being paid from treasuries in a transferred area, be liabilities of Orissa;

(b) in the case of other pensions granted by Madras before the appointed day, be liabilities of Madras;

(c) in the case of pensions granted after the appointed day, be liabilities of the Province granting the pension.

(2) Nothing in this paragraph shall be taken as prohibiting the payment from treasuries in the one Province of pensions which are the liability of the other, and if any pensions are so paid the necessary adjustments shall be made between the two Provinces.

10. (1) The provisions of this paragraph shall, for the twenty-five years commencing on the appointed day, have effect with respect to Madras Government educational institutions which before the appointed day served not only Madras but also any area comprised in Orissa as constituted by this Order.

(2) There shall be reserved for Orissa either—

(a) the specific number of places reserved for residents in Orissa immediately before the appointed day, or

(b) if a specific number of places was not so reserved, a number of places as near as may be equal to the average number of places filled by residents in Orissa during the three years immediately preceding the appointed day.

(3) The charge to be made for admittance to the places aforesaid shall be calculated on a cost basis, account being taken of the pensions which will ultimately be payable to and in respect of the staff, and of debt outstanding on the appointed day or incurred after the appointed day, but no account being otherwise taken of capital expenditure incurred before the appointed day.

Provided that the charge made for admittance to the said places shall in no case exceed that made in respect of other persons resident outside Madras.

(4) If for any five consecutive years after the appointed day Orissa fails to fill any of the places so reserved, the right of Orissa to that place shall lapse.

PART III.

ADJUSTMENTS BETWEEN THE CENTRAL PROVINCES AND ORISSA.

1. All land, works, forests, buildings and contents of buildings in a transferred area shall pass to Orissa.

2. Arrears of taxes in respect of property or transactions in a transferred area shall belong to Orissa.

3. Immovable property in a transferred area vested immediately before the appointed day in the Raipur District Council or the Bilaspur District Council shall vest in the Sambalpur District Council on such terms as the Government of the Central Provinces and the Government of Orissa may by mutual agreement determine, or as in the default of such agreement may be determined by the Governor-General in Council.

4. As respects any other assets and liabilities of the Raipur District Council and the Bilaspur District Council there shall be made between those Councils respectively and the Sambalpur District Council such apportionments on such terms as the Government of the Central Provinces and the Government of Orissa may by mutual agreement determine; or as in default of such agreement may be determined by the Governor-General in Council; regard being had to the transfer of areas effected by this Order.

(3)
**THE GOVERNMENT OF INDIA (CONSTITUTION OF SIND)
ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,
The 3rd day of March, 1936.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS it is provided by sub-section (1) of section two hundred and eighty-nine of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act"), that, as from such date as His Majesty may by Order in Council appoint, Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind:

AND WHEREAS by sub-section (2) of the said section His Majesty is empowered by Order in Council to make other provision in connection with the establishment of the Province of Sind:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order and it is hereby ordered, as follows:—

PART I.

INTRODUCTORY.

1. This Order may be cited as the Government of India (Constitution of Sind) Order, 1936.

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

PART II.

DEFINITION OF SIND AND DATE OF SEPARATION.

3. In the Act and in this Order "Sind" means the territory known at the date of this Order as the Division of Sind, and the boundaries of that Division shall be the boundaries of Sind.

4. (1) The date on which, under sub-section (1) of section 289 of the Act, Sind is to be separated from the Presidency of Bombay and form a Governor's Province shall be the first day of April, nineteen hundred and thirty-six.

(2) The said date is hereafter in this Order referred to as "the appointed day," and the period beginning on the appointed day and ending immediately before the commencement of Part III of the Act is hereafter in this Order referred to as "the transitional period."

PART III.

PROVISIONS WITH RESPECT TO THE TRANSITIONAL PERIOD:

Duration.

5. The provisions of this Part of this Order shall have effect with respect to the transitional period.

Administration

6. Save as provided by this Order, the Government of India Act and any Rules made thereunder shall apply in relation to Sind as they apply in relation to other Governors' Provinces.

7. The Governor shall be appointed by His Majesty by warrant under the Royal Sign Manual, after consultation with the Governor-General, and there shall be paid to him an annual salary of sixty six thousand rupees. and such allowances as the Secretary of State in Council may determine.

8. (1) Sind shall be governed in relation to all provincial subjects by the Governor, and so much of the Government of India Act and the Rules made thereunder as relates to the classification of provincial subjects as reserved and transferred shall not apply to Sind.

(2) The Governor shall have no executive council and any reference in Part IV of the Devolution Rules to the Governor in Council shall be construed as a reference to the Governor.

(3) The Governor shall be deemed for all purposes to be the local government of Sind.

9. (1) There shall be an advisory council consisting of not more than twenty-five members to be nominated by the Governor and of those persons not more than three shall be officials.

(2) The council may advise on all such matters as the Governor may refer to them.

(3) The business of the council shall be conducted by the council or its committees in such manner, and the council and its committees shall be presided over by such persons as the Governor may direct.

(4) There shall be paid to the members of the council such allowances as the Governor-General in Council may determine.

(5) So much of the Government of India Act and the Rules made thereunder as relates to legislative councils shall not apply to Sind.

10. (1) The Governor may, if he thinks fit, appoint one or more members of the advisory council to assist him in such manner as he thinks fit, and there shall be paid to any person so appointed such salary and allowances as may be fixed by the Governor-General in Council.

(2) Any such appointment shall be terminable at the pleasure of the Governor.

LEGISLATION.

11. The provisions of section seventy-one of the Government of India Act (except sub-section (4) thereof) shall apply to the whole of Sind and regulations may be made thereunder accordingly.

Finance.

12. (1) The Governor shall, before or as soon as may be after the beginning of each financial year falling wholly or partly within the transitional period, cause a statement of the estimated annual receipts and expenditure of Sind for that year together with proposals for appropriation of the revenues of Sind to be laid before the advisory council for general discussion, but no item shall be submitted to the vote of the council; and after the discussion the Governor shall authenticate under appropriate

heads the amounts of the appropriations, and thereupon expenditure may be undertaken accordingly.

(2) During any period in any financial year preceding the authentication aforesaid expenditure for that year may be undertaken in respect of such matters and within such limits as the Governor may from time to time by written order determine.

13. If in any financial year further expenditure from the revenues of Sind becomes necessary over and above the expenditure authorised under the last preceding paragraph for that year, the Governor shall cause a supplementary statement showing the estimated amount of that expenditure to be laid before the advisory council, and the provisions of that paragraph shall apply with any necessary modifications with respect to that statement and that expenditure.

14. Subject to such instructions as the Governor-General in Council may issue, the Governor shall make such arrangements as he deems necessary for the control of expenditure out of the revenues of Sind, and Part III of the Devolution Rules (which relates to finance departments) shall not apply to Sind.

15. (1) In the table of annual assignments for famine relief set out in paragraph one of Schedule IV to the Devolution Rules, for the entry—

"Bombay.....12,00,000"

there shall be substituted the following entry—

"Bombay..... 10,75,000"

and the following entry shall be added—

"Sind.....1,25,000"

(2) In the table of accumulated totals set out in paragraph five of the said Schedule IV, for the entry—

"Bombay.....75,00,000"

there shall be substituted the following entry—

"Bombay.....63,00,000"

and the following entry shall be added—

"Sind.....12,00,000"

16. (1) There shall be a Revenue Commissioner for Sind who shall discharge such functions as the Governor may, with the previous sanction of the Governor-General in Council, from time to time assign to him, and any provision in force immediately before the appointed day contained in or made under any enactment shall have effect accordingly.

(2) Any revenue appeals pending immediately before the appointed day in relation to any matter in Sind shall be transferred to, and disposed of by, such persons as the Governor may, with the previous sanction of the Governor-General in Council, direct.

Other Matters.

17. The Governor may from time to time by notification in the local official gazette direct what officer (other than the Revenue Commissioner) is to exercise in Sind any functions exercisable by virtue of any provision in force immediately before the appointed day contained in or made under any enactment, and any such provision shall have effect accordingly.

18. The provisions of the First Schedule to this Order shall have effect with respect to the legislative council of Bombay.

PART IV.

MISCELLANEOUS.

19. The Council of State Electoral Rules and the Legislative Assembly Electoral Rules and any Regulations applied thereby shall, until

amended by competent authority, continue to have effect as if Sind had not been separated from Bombay:

Provided that anything required by those Rules or Regulations to be done by the Governor, the local government or officials of Bombay shall, either generally or as respects any particular area or any particular matter, be done by such Governor, local government or officials as the Governor-General in Council may direct.

20. (1) There shall be an apportionment of assets and liabilities between Sind and the Presidency of Bombay, and that apportionment shall be made in accordance with the provisions contained in the Second Schedule to this Order.

(2) Any dispute arising under the said provisions shall be referred to and decided finally by the Secretary of State in Council, or, after the commencement of Part III of the Act, the Secretary of State.

21. For the avoidance of doubt it is hereby declared that all persons serving under the Crown immediately before the appointed day in, or in connection with the affairs of, the Presidency of Bombay may be required to serve in, or in connection with the affairs of, either Bombay or Sind, subject, however, to any conditions for their protection prescribed by the Governor-General in Council, either generally or in relation to any particular persons or classes of persons.

22. Any appointment made under Part III of this Order of a person to be Governor of Sind shall as from the commencement of Part III of the Act have effect as if it were an appointment made under section forty-eight thereof.

23. Until other provision is made under the Act, any officer who immediately before the commencement of Part III of the Act was exercising any functions by virtue of anything done under Part III of this Order shall continue to exercise those functions.

24. The provisions of this Order shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that that enactment is expressed to apply or extend to the territories for the time being under a particular administration:

Provided that nothing in this paragraph shall be construed as affecting the power to make regulations for Sind under section seventy-one of the Government of India Act as applied by this Order.

25. For the purpose of facilitating the application in relation to Sind of any enactment, notification, order, scheme, rule, form or bye-law passed, issued or made before the appointed day, any Court may, subject to any express provision of this Order, construe the enactment, notification, order, scheme, rule, form or bye-law with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Court.

M. P. A. Hanker.

FIRST SCHEDULE.

PROVISIONS AS TO LEGISLATIVE COUNCIL OF BOMBAY.

1. In this Schedule the expression "the Council" means the Legislative Council of Bombay.

2. (1) On the appointed day the constituencies mentioned in sub-paragraph (2) of this paragraph shall cease to be constituencies returning members to sit in the Council, the persons who immediately before that date are members for the said constituencies shall vacate their seats and the number of elected members of the Council and the total number of members thereof shall be reduced to sixty-seven and ninety-five respectively.

(2) The constituencies referred to in the preceding sub-paragraph are the following, namely: Karachi City, Eastern Sind, Western Sind, Karachi City (Muham-

madan), Hyderabad District (Muhammadan), Karachi District (Muhammadan), Larkana District (Muhammadan), Sukkar District (Muhammadan), Thar and Parkar (Muhammadan), Nawabshah District (Muhammadan), Upper Sind Frontier District (Muhammadan), Jagirdars and Zamindars (Sind), Karachi Chamber of Commerce.

3. (1) For the purpose of the Rules with respect to the qualifications of electors, eligibility for election, for the Presidency (European) constituency and the Bombay University constituency in Sind shall, as from the appointed day; cease to be regarded as residence in the Presidency, and, if a by-election falls to be held for either of the said constituencies between the appointed day and the completion of the next general revision of the electoral roll for that constituency, a person who is included in that roll by virtue of residence in Sind shall not be entitled to vote or be eligible for election.

(2) A person who immediately before the appointed day is a member for either of the said constituencies shall continue to represent that constituency as if he had been elected to represent that constituency as altered by the preceding sub-paragraph, and, notwithstanding that his residence may be in Sind, shall, until the next dissolution of the Council, be deemed to have been, and to be, duly qualified to be so elected and to be a member for the constituency as so altered.

SECOND SCHEDULE.

PROVISIONS AS TO APPORTIONMENT.

1. Subject to the provisions of this Schedule relating to certain unissued stores, all land, works, forests, buildings and contents of buildings shall remain the property of, or, as the case may be, pass to the Province in which they are situated.

2. Arrears of taxes shall belong to the Province in which the taxed property is situate or the taxed transactions took place.

3. Of the outstanding Bombay, Irrigation Debt incurred before the first day of April; nineteen hundred and twenty-one; twenty-seven million, four hundred and ninety-six thousand, three hundred and eighty-four rupees shall be the debt of Sind and the remainder shall be the debt of Bombay.

4. The outstanding debt on account of the Lloyd Barrage and Canals system—
(a) neither Province shall be responsible for the amount outstanding on account of the Nasirabad section;

(b) seventy-three thousand, six hundred and eighty-seven rupees shall be deemed to be outstanding Irrigation Debt for the purposes of paragraph three and shall be dealt with thereunder; and

(c) the remainder of the debt shall be the debt of Sind alone.

5. The outstanding Bombay debt on account of the Bombay Development Scheme shall be the debt of Bombay alone.

6. Subject as aforesaid, as respects the outstanding Bombay debt incurred since the end of March, nineteen hundred and twenty-one, on account of works classified as (1) productive irrigation works, (2) other productive works, (3) unproductive irrigation works, and (4) other unproductive works—

(a) in so far as the requisite information is forthcoming, the debt shall be allocated year by year and class by class between the two Provinces according to the location of the works on which the money borrowed was spent;

(b) the remainder of the debt shall be allocated year by year and class by class between the two Provinces in proportion to the gross amounts spent since the end of March, nineteen hundred and twenty-one, on works or parts of works in the respective Provinces; not being works or parts of works otherwise taken into account under this and the two last preceding paragraphs:

Provided that for the purposes of sub-paragraph (b) of this paragraph no account shall be taken of works or parts of works the cost of which is known to have been wholly defrayed otherwise than from borrowed money.

7. Any sums due on or after the appointed day in respect of loans made before the appointed day from the Provincial Loans Account shall belong to the Province in which the persons from whom the sums are due were resident on the appointed day and each Province shall be liable for so much of the debt on account of the Provincial Loan Account as is equal to the total of the capital sums repayable to that Province under this paragraph.

8. Of the Famine Relief Fund an amount equal to fifteen per cent. of the difference between the gross balance of the Fund and the amount due to the Fund from the Provincial Loan Account shall be paid to the Sind Famine Relief Fund and the remainder shall continue in the Bombay Famine Relief Fund.

9. So much of the Road Development Fund as together with the amount spent in Sind before the appointed day from that Fund, excluding amounts spent in the

financial year 1931-32 on the maintenance of roads, will amount to one quarter of the gross receipts of that Fund since its institution; shall belong to Sind and the remainder shall belong to Bombay.

10. Borrowed money unexpended on the appointed day together with the corresponding liability shall be divided between the two Provinces in such manner as may be mutually convenient to them.

11. Reserve funds shall be divided between the two Provinces according as the purposes of the funds are purposes of the one Province or the other.

12. If and in so far as any item in suspense is ultimately found to affect any capital head referred to in the foregoing paragraphs of this Schedule, it shall be dealt with in accordance with the provisions of the relevant paragraph.

13. Any substantial quantities of unissued stores of any class shall be divided between the two Provinces in proportion to the indents for stores of that class made in the three years immediately preceding the appointed day for the areas comprised in those Provinces respectively.

14. (1) Subject to the adjustment mentioned in sub-paragraph (3) of this paragraph, liabilities in respect of pensions granted before the appointed day shall, in the case of pensions which immediately before the appointed day were being paid from treasuries in Sind, be liabilities of Sind, and in other cases be liabilities of Bombay.

(2) Subject to the said adjustment, liabilities in respect of pensions granted after the appointed day shall be liabilities of the Province granting the pension.

(3) There shall be computed in each month after the appointed day the total liability of each Province—

(a) in respect of pensions granted before the appointed day;

(b) in respect of so much of any pensions granted after the appointed day as is attributable to service before the appointed day, and Sind shall pay to Bombay monthly the amount by which the total liability of Bombay for that month exceeds eighty-five per cent. of the total liability of both Provinces for that month.

(4) Any question as to how much of any pension is attributable to service before the appointed day shall be determined by comparing the length of the service of the officer in question before the appointed day with the length of his service after the appointed day.

(5) Nothing in this paragraph shall be taken as prohibiting the payment from treasuries in the one Province of pensions which are the liability of the other, and if any pensions are so paid the necessary adjustments shall be made between the two Provinces.

15. (1) The benefit or burden of any assets or debts not dealt with in the foregoing provisions of this Schedule shall be attributed, as to eighty-five per cent. thereof to Bombay, and as to fifteen per cent. thereof to Sind.

(2) The provisions of this paragraph shall apply to any debt attributable to pensions or the commutation of pensions notwithstanding that that debt has been debited to the capital head "Construction of irrigation, navigation, embankment and drainage works," and the provisions of this Schedule relating to debts on account of works shall have effect accordingly.

16. (1) The provisions of this paragraph shall, for the twenty-five years commencing on the appointed day, have effect with respect to Government hospitals and educational institutions in Bombay (including any therapeutic institutes, Borstal institutions and reformatory schools) which before the appointed day served Sind as well as the rest of Bombay.

(2) There shall be reserved for Sind either—

(a) the specific number of places reserved for residents in Sind immediately before the appointed day; or

(b) if a specific number of places was not so reserved, a number of places as near as may be equal to the average number of places filled by residents in Sind during the three years immediately preceding the appointed day.

(3) The charge to be made for admittance to the places aforesaid shall be calculated on a cost basis, account being taken of the pensions which will ultimately be payable to and in respect of the staff and of debt outstanding on, or incurred after, the appointed day, but no account being otherwise taken of capital expenditure incurred before the appointed day.

Provided that the charge made for admittance to the said places shall in no case exceed that made in respect of other persons resident outside Bombay.

(4) If for any five consecutive years after the appointed day Sind fails to fill any of the places so reserved, the right of Sind to that place shall lapse.

(4)
**THE GOVERNMENT OF INDIA (SCHEDULED CASTES)
ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,

The 30th day of April, 1936.

Present,

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by certain provisions in the First, Fifth and Sixth Schedules to the Government of India Act, 1935, His Majesty in Council is empowered to specify the castes, races or tribes or parts of or groups within castes, races or tribes which are to be treated as the scheduled castes for the purposes of those Schedules:

AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the said Act and an Address has been presented by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling Him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Government of India (Scheduled Castes) Order, 1936."

2. Subject to the provisions of this Order, for the purposes of the First, Fifth and Sixth Schedules to the Government of India Act, 1935, the castes, races or tribes, or parts of or groups within castes, races or tribes specified in Parts I to IX of the Schedule to this Order shall, in the Provinces to which those Parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule.

3. Notwithstanding anything in the last preceding paragraph—

(a) no Indian Christian shall be deemed to be a member of a scheduled caste;

(b) in Bengal no person who professes Buddhism or a tribal religion shall be deemed to be a member of any scheduled caste; and if any question should arise as to whether any particular person does or does not profess Buddhism or a tribal religion, that question shall be determined according to the answers which he may make, in the prescribed manner, to such questions as may be prescribed.

4. In this Order the expression "Indian Christian" has the same meaning as it has for the purposes of Part I of the First Schedule to the Government of India Act, 1935, and the expression "prescribed" means prescribed by rules made by the Governor of Bengal, exercising his individual judgment.

5. Any reference in the Schedule to this Order to any division, district, sub-division, tahsil or municipality shall be construed as a reference to that division, district, sub-division, tahsil or municipality as existing on the first day of July, nineteen hundred and thirty-six.

M. P. A. Hankey.

SCHEDULE.

PART I.—MADRAS.

(1) Scheduled castes throughout the Province.

Adi-Andhra	Gosangi	Padi
Adi-Dravida	Haddi	Panda
Adi-Karnataka	Hasla	Paky
Ajila	Holeya	Pallan
Arunthuthiyar	Jaggali	Pambala
Baira	Jambuvulu	Pamrthi
Bakuda	Kalladi	Panchama
Bandi	Kanakkan	Panayan
Bariki	Kodalo	Pannicandi
Battada	Koosa	Paraiyan
Bavuri	Koraga	Parayan
Bellara	Kudumban	Pulayan
Byagari	Kuravan	Puthurai Vannan
Chachati	Madari	Raneyar
Chakkiliyan	Madiga	Reli
Chalavadi	Maika	Samagara
Chamar	Mala	Samban
Chandala	Mala Dasu	Sapari
Cheruman	Matangi	Semman
Dandas	Moger	Thoti
Devendrakulathan	Muchi	Thruvulluvur
Ghasi	Mundala	Valluvan
Godagali	Nalakeyava	Valmiki
Godari	Nayadi	Vettuvan
Godda	Paga dai	

(2) Scheduled castes throughout the Province except in any special constituency constituted under the Government of India Act, 1935, for the election of a representative of backward areas and backward tribes to the Legislative Assembly of the Province:—

Aranadan	Kattunayakan	Kuruman
Dombo	Kudiya	Malasar
Kadan	Kudubi	Mavilan
Karimpalan	Kurichchan	

PART II.—BOMBAY.

Scheduled castes:—

(1) Throughout the Province:—

Asodi	Dhor	Meghval; or Mengh-
Bakad	Garode	war
Bhambi	Halleer	Mini Madig
Bhangi	Halsar, or Haslar, or	Mukri
Chakrawadya-Dasar	Hulsavar	Nadia
Chalvadi	Holaya	Shenva, or Shindhava
Chambhar, or Mochi	Khalpa	Shingdav; or Shinga-
gar or Samagar	Kolcha, or Kolgha	dya
Chena-Dasaru	Koli Dhor	Sochi
Churar, or Chuhra	Lingader	Timah
Dakaleru	Madig, or Mang	Turi
Dhed	Mahar	Vankar
Dhegu-Megu	Maung Garudi	Vitholia

(2) Throughout the Province except in the Ahmedabad, Kaira, Broach and Panch Mahals and Surat districts—Mochi.

(3) In the Kanara district—Kotegar.

PART III.—BENGAL.

Scheduled castes throughout the Province:—

Agariya	Baiti	Beldar
Bagdi	Bauri	Berna
Bahelia	Bediya	Bhatiya

PART III—BENGAL—(Contd.)

Bhuimali	Kandh	Mehtor
Bhuiya	Kandra	Muchi
Bhumij	Kaora	Munda
Bind	Kapuria	Musahar
Binjhia	Karenga	Nagesia
Chamar	Kastha	Namasudra
Dhenuar	Kaur	Nat
Dhoba	Khaura	Nuniya
Doai	Khatik	Oraon
Dom	Koch	Paliya
Dosadh	Konai	Pan
Garó	Konwar	Pasi
Ghasi	Kora	Patni
Gonrhi	Kotal	Pod
Hadli	Lalbegi	Rabha
Hajang	Lodha	Rajbanshi
Halalkhor	Lohar	Rajwar
Hari	Mahar	Santal
Ho	Mahli	Sunri
Jalia Kaibartta	Mal	Tiyar
Jhalo Malo, or Malo	Mallah	Turi
Kadar	Malpahariya	
Kan	Mech	

PART IV.—UNITED PROVINCES.

Scheduled castes:—

(1) Throughout the Province:—

Agariya	Chamar	Kharot	
Aheriya	Chero	Kharwar	(except
Badí	Dabgar	Benbansi)	
Badhik	Dhangar	Khatik	
Beheliya	Dhanuk (Bhangi)	Kol	
Bajaniya	Dharkar	Korwa	
Bagi	Dhobi	Lalbegi	
Balahar	Dom	Majhwar	
Balmiki	Domar	Nat	
Banmanus	Gharani	Pankha	
Bansphor	Ghasiya	Parahiya	
Barwar	Gual	Pasi	
Basor	Habura	Patari	
Bawariya	Hari	Rawat	
Beldar	Hela	Sahary	
Bengali	Kalabaz	Sanaurhiya	
Beriya	Kanjar	Sansiya	
Bhantu	Kapariya	Shilpkar	
Bhuiya	Karwal	Tharu	
Bhuyiar	Khairaha	Turaha	
Boriya			

(2) Throughout the Province except in the Agra, Meerut and Rohilkhand divisions—Kori.

PART V.—PUNJAB.

Scheduled castes throughout the Province:—

Ad Dharmis	Marija, or Marecha	Khatik
Bawaria	Bangali	Kori
Chamar	Barar	Nat
Chura, or Balmiki	Bazigar	Pasi
Dagi and Koh	Bhanjra	Perna
Dumna	Chanal	Sapela
Od	Dhanak	Sirkiband
Sansi	Gagra	Meghs
Sarera	Gandhita	Ramdasis

PART VI.—BIHAR.

Scheduled castes:—

(1) Throughout the Province:—

Chamar	Halalkhor	Mochi
Chaupal	Hari	Musahar
Dhobi	Kanjar	Nat
Dusadh	Kurariar	Pasi
Dom	Lalbegi	

(2) In the Patna and Tirhut divisions and the Bhagalpur, Monghyr, Palamau and Purnea districts:—

Bauri	Bhumij	Rajwar
Bhogta	Ghasi	Turi
Bhuiya	Pan	

(3) In the Dhanbad subdivision of the Manbhum district and the Central Manbhum general rural constituency, and the Purulia and Raghunathpur municipalities:—

Bauri	Ghasi	Rajwar
Bhogta	Pan	Turi
Bhuiya		

PART VII.—CENTRAL PROVINCES AND BERAR.

<i>Scheduled Castes.</i>	<i>Localities.</i>
Basor; or Burud	Throughout the Province.
Chamar	
Dom	
Ganda	
Mang	
Mehtar, or Bhangri	
Mochi	
Satnami	
Audhelia	
Bahna	
Balahi, or Balai	In the Bilaspur district.
	In the Amraoti district.
	In the Berar division and the Balaghat, Bhandara, Betul, Chanda, Chhindwara, Hoshangabad, Jabulpore, Mandla, Nagpur, Nimar, Saugor and Wardha districts.
Bedar	In the Akola, Amraoti and Buldana districts.
Chadar	In the Bhandara and Saugor districts.
Chauhan	In the Drug district.
Dahayat	In the Damoh sub-division of the Saugor district.
Dewar	In the Bilaspur, Drug and Raipur districts.
Dhanuk	In the Saugor district, except in the Damoh sub-division thereof.
Dhimar	In the Bhandara district.
Dhobi	In the Bhandara, Bilaspur, Raipur and Saugor districts, and the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district.
Dohor	In the Berar division, and the Balaghat, Bhandara, Chanda, Nagpur and Wardha districts.
Ghasia	In the Berar division and in the Balaghat, Bhandara, Bilaspur, Chanda, Drug, Nagpur, Raipur and Wardha districts.
Holiya	In the Balaghat and Bhandara districts.
Jangam	In the Bhandara district.
Kaikari	In the Berar division, and in Bhandara, Chanda, Nagpur and Wardha districts.
Katia	In the Berar division, in the Balaghat, Betul, Bhandara; Bilaspur; Chanda; Drug; Nagpur; Nimar, Raipur and Wardha districts, in the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district, in the Chhind-

<i>Scheduled Castes,</i>	<i>Localities</i>
	wara district, except in the Seoni sub-division thereof, and in the Saugor district, except in the Damoh sub-division thereof.
Khangar	In the Bhandara, Buldana and Saugor districts and the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district.
Khatuk	In the Berar division, in the Balaghat, Bhandara, Chanda, Nagpur and Wardha districts, in the Hoshangabad tahsil of the Hoshangabad district, in the Chhindwara district, except in the Seoni sub-division thereof, and in the Saugor district, except in the Damoh sub-division thereof.
Koh	In the Bhandara and Chanda districts.
Kori	In the Amraoti, Balaghat, Betul, Bhandara, Buldana, Chhindwara, Jubbulpore, Mandla, Nimar, Raipur and Saugor districts, and in the Hoshangabad district, except in the Harda and Sohagpur tahsils thereof.
Kumhar	In the Bhandara and Saugor districts and the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district.
Madgi	In the Berar division, and in the Balaghat, Bhandara, Chanda, Nagpur and Wardha districts.
Mala	In the Balaghat, Betul, Chhindwara, Hoshangabad, Jubbulpore, Mandla, Nimar and Saugor districts.
Mehta, or Mahar	Throughout the Province, except in the Harda and Sohagpur tahsils of the Hoshangabad district.
Nagarchi	In the Balaghat, Bhandara, Chhindwara; Mandla; Nagpur and Raipur districts.
Ojha	In the Balaghat, Bhandara and Mandla districts and the Hoshangabad tahsil of the Hoshangabad district.
Panka	In the Berar division, in the Balaghat, Bhandara, Bilaspur, Chanda, Drug, Nagpur, Raipur, Saugor and Wardha districts and in the Chhindwara district, except in the Seoni sub-division thereof.
Pardhi	In the Narsinghpur sub-division of the Hoshangabad district.
Pradhan	In the Berar division, in the Bhandara Chanda, Nagpur, Nimar, Raipur and Wardha districts and in the Chhindwara district, except in the Seoni sub-division thereof.
Rujjhar	In the Sohagpur tahsil of the Hoshangabad district.

PART VIII.—ASSAM.

Scheduled castes:—

(1) In the Assam Valley:—

Namasudra
Kaibartta
Bania, or Brittil-Bania

Hira
Lalbegi

Mehtar, or Bhangi
Bansphor

(2) In the Surma Valley:—

Mali, or Bhumali
Dhupi, or Dholi
Dugla, or Dholi
Jhalo and Malo
Mahara

Sutradhar
Muchi
Patni
Namasudra

Kaibartta, or Jaliya
Lalbegi
Mehtar, or Bhangi
Bansphor

PART IX.—ORISSA.

Scheduled castes:—

(1) Throughout the Province:—

Adi-Andhra	Godra	Mangan
Audhelia	Gokha	Mehra, or Mahar
Bariki	Haddi, or Hari	Mehtar, or Bhangi
Basor or Burud	Irika	Mochi, or Muchi
Bavuri	Jaggali	Paidi
Chachati	Kandra	Painda
Chamar	Katia	Pamidi
Chandala	Kela	Panchama
Dandasi	Kodalo	Panka
Dewar	Madari	Relli
Dhoba, or Dhobi	Madiga	Sapari
Ganda	Mahuria	Satnami
Ghusuria	Mala	Siyal
Godagali	Mang	Valamiki
Godari		

(2) Throughout the Province except in the Khondmals district, the district of Sambalpur, and the areas transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936, from the Vizagapatam and Ganjam Agencies in the Presidency of Madras:—

Pan, or Pano.

(3) Throughout the Province except in the Khondmals district and the areas so transferred to Orissa from the said Agencies:—

Dom, or Dombo.

(4) Throughout the Province except in the district of Sambalpur:—

Bauri	Bhumij	Turi
Bhuiya	Ghasi, or Ghasia	

(5) In the Nawapara sub-division of the district of Sambalpur:—

Kori	Nagarchi	Pradhan
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(5)
**THE GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE
ASSEMBLIES) ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,

The 30th day of April, 1936.

Present :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-one of, and the Fifth and Sixth Schedules to, the Government of India Act, 1935 (hereafter in this Order referred to as "the Act"), His Majesty in Council is empowered to make provision with respect to certain matters connected with Provincial Legislative Assemblies:

AND WHEREAS by sub-section (4) of section three hundred and eight of the Act His Majesty in Council is empowered to make amendments of the provisions of the Act relating to the qualifications of members of Provincial Legislative Assemblies and the qualifications entitling persons to be registered as voters for the purposes of elections to those Assemblies:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on Him as aforesaid and of all other powers enabling Him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

PART I.

Introductory and General.

Introductory.

1. This Order may be cited as THE GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE ASSEMBLIES) ORDER, 1936.

2. (1) In this Order, except where the context otherwise requires—

"territorial constituency" means one of the territorial constituencies mentioned in paragraphs five and eight of the Fifth Schedule to the Act;

"special constituency" means a constituency not being a territorial constituency;

"seat", "election", and "constituency" in relation to any Province mean respectively a seat in the Legislative Assembly of that Province and an election or a constituency for the purpose of filling such a seat, and "election" includes a primary election;

"prescribed", except in the phrase "the prescribed date", has the same meaning as in the Fifth Schedule to the Act;

"rules" means rules made under paragraph twenty of the Fifth Schedule to the Act;

"commerce" includes banking, insurance and transport;

"mining" includes the getting of oil;

"factory" means a factory within the meaning of the Factories Act, 1934, and "perennial factory" means a factory which is not a seasonal factory for the purposes of that Act;

"mine" means a mine which is subject to the provisions of the Indian Mines Act, 1923;

"Gazette" means the Government Gazette of the Province in question;

"preparation" in relation to an electoral roll includes the revision thereof, and "prepare" shall be construed accordingly;

"member" in relation to a constituent body for a commerce and industry, mining or planting constituency does not include an associate member;

and, subject as aforesaid and to any other provisions of this Order, expressions to which a meaning is assigned by the Sixth Schedule to the Act, either generally or in relation to any particular Province, have, except where the context otherwise requires, the same meanings for the purposes of this Order, either generally or in relation to that Province, as the case may be.

(2) The fact that one of two territorial constituencies is an urban and the other a rural constituency, or that in one of them the seat or one of the seats is a woman's seat or a reserved seat, shall not prevent them being deemed to be constituencies of the same communal description or constituencies of a similar class if they are both general constituencies or constituencies assigned to a special community, and the expressions "seat of the same communal description" and "seat of a similar class" shall for the purposes of the Schedules to the Act and of this Order be construed accordingly.

(3) Any reference in this Order to a paid up capital of not less than a specified amount shall be construed as including a reference to a paid up capital of not less than the equivalent of that amount in sterling.

(4) Any reference in this Order to all or any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted.

(5) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Special Constituencies.

3. There shall be an electoral roll for every special constituency and no person who is not, and, except as expressly provided by the Fifth Schedule to the Act and this Order, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

4. The electoral rolls for the special constituencies shall be made up, and from time to time in whole or in part revised, by reference to such date, in this Order referred to as "the prescribed date", as may be directed in each case by the Governor, exercising his individual judgment.

5. Subject to any express provisions of this Order, no person shall be included in the electoral roll for any special constituency unless he has attained the age of twenty-one years and is either:—

(a) a British subject; or

(b) the Ruler or a subject of a Federated State; or

(c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

6. No person shall be included in the electoral roll for, or vote at any election in, a special constituency if he is of unsound mind and stands so declared by a competent Court.

7. No person shall be included in the electoral roll for, or vote at any election in, a special constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules as may be made or passed under the Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for special constituencies in which it may be included.

8. No person shall vote at an election in a special constituency if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment.

9. For the purposes of the provisions of this Order relating to the qualifications for inclusion in electoral rolls for special constituencies, any property owned, held or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver, or in any other fiduciary capacity, shall, subject as hereinafter provided, be left out of account:

Provided that, except in the United Provinces, a person shall be qualified to be included in the electoral roll for a land-holder's constituency if he—

(a) is on the prescribed date the guardian of a minor who under this Order would have been entitled to be included in that roll if he were of full age and satisfied the relevant requirements of this Order as to residence; and

(b) would himself have been entitled to be included in that roll, if the property of the minor were his own property.

10. For the purposes of the said provisions, where property is owned, held or occupied or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether any qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and, in the case of any other joint family, the member thereof authorised in that behalf by the family:

Provided that in the case of Bengal this paragraph shall not apply where members of a joint family have separate accommodation and separate messing, and in the case of the Punjab it shall not apply where the respective shares of the members of a joint family are specified in land records or municipal or cantonment records or a decree of a civil court.

11. Subject to the provisions of the last preceding paragraph, where any property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, more than one person, any reference in the provisions of this Order relating to special constituencies to any property, payment or assessment shall be construed as a reference to each person's share of that property, payment or assessment.

12. Where under the provisions of this Order any qualification for being included in an electoral roll for a special constituency depends upon

the owning or holding of land in a specified area, or the being assessed or the making of payments in respect of land in a specified area, or of more parcels of land in that area owned or held by a person, and assessments made on or payments made by a person in respect of two or more parcels of land in that area, may be aggregated for the purpose of determining whether the qualification exists, but without prejudice, and subject, to any express provision in this Order with respect to such aggregation.

13. A person shall not be qualified to be included in the electoral roll for any labour constituency if he is subject to Indian military law.

General.

14. (1) For the avoidance of doubt, it is hereby declared that a primary election held for the purpose of electing candidates for a seat reserved for members of the scheduled castes may be proceeded with notwithstanding that less than four candidates stand at that primary election, and that the remainder of the election may be proceeded with notwithstanding that, by reason of a deficiency of candidates at the primary election or by reason of the withdrawal or death of candidates elected thereat, there are or remain less than four duly elected scheduled caste candidates for the seat.

(2) At a poll at any such primary election no voter shall have more than one vote.

(3) Save as expressly provided in this Order with respect to Bengal, a member of the scheduled castes shall not be disqualified to hold a seat not reserved for members of the scheduled castes by reason that he has not been elected at a primary election as a candidate for a seat so reserved.

15. Subject to any express provisions of this Order to the contrary, where at an election a poll is taken for the purpose of filling more than one seat, a voter shall have as many votes as there are seats to be filled on the poll and may give all those votes to one candidate, or may distribute them between such candidates and in such manner as he thinks fit.

16. (1) The provisions of this paragraph shall apply in relation to any election in a constituency where the seats to be filled include a seat or seats reserved for members of the scheduled castes, or a seat reserved for a Maratha, a representative of backward tribes or areas, or, in the case of the Bengal Anglo-Indian constituency, a woman.

(2) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is equal to the number of seats so reserved all those candidates shall be declared to be elected to fill the reserved seat or reserved seats and a poll shall only be taken, if necessary, for filling any seat or seats not filled under this sub-paragraph.

(3) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is greater than the number of seats so reserved, then, when the counting of the votes has been completed, the Returning Officer shall first declare that one, or those, of the qualified candidates to whom the largest number of votes has been given to be elected to fill the reserved seat or the reserved seats.

(4) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is less than the number of seats so reserved, all those candidates, if any, shall be declared to be elected to fill seats so reserved, and the Governor, exercising his individual judgment, shall by notification

in the Gazette call on the constituency to elect a person or persons, as the case may be, within such time as may be specified in the notification :

Provided that where a constituency having been already so called upon has failed to elect a person, or the requisite number of persons, as the case may be, to fill a vacancy or vacancies, the Governor shall not be bound again to call upon the constituency to elect a person or persons to fill the vacancy or vacancies until such time as, exercising his individual judgment, he may think fit.

17. If, when a poll has been taken at an election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the Returning Officer to the candidate, or, as the case may be, the candidates, selected by lot drawn in the presence of the Returning Officer in such manner as he may determine.

18. (1) The fact that a person or body has, in relation to any constituency, more than one qualification to be included, or to nominate persons to be included, in the electoral roll therefor, shall not increase his or its rights as respects inclusion, or, as the case may be, the nomination of persons for inclusion, in that roll.

(2) No person shall be entitled to be included twice in the electoral roll for any particular constituency, and the fact that a person is included twice in the electoral roll for a constituency shall not increase his rights as respect voting therein.

19. If a person is elected to more than one seat in the Legislative Assembly of a Province then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant.

20. (1) The dates on which nominations are to be made and scrutinised, polls held and other acts done in connection with elections to a Provincial Legislative Assembly shall be fixed by the Governor in his discretion.

(2) Nothing in this paragraph shall be construed as preventing Acts of the Provincial Legislature or rules from making general provision with respect to the intervals which are to elapse between the successive stages of an election.

21. (1) In all constituencies the electoral rolls shall be prepared by such authority as the Governor exercising his individual judgment shall appoint :

Provided that in the preparation of such rolls the authority so appointed may, subject to any prescribed restrictions, employ such persons as he thinks fit.

(2) In all constituencies and at all elections the Returning Officer shall be a person in the service of the Crown in India.

22. (1) If the boundaries of any district or other administrative area mentioned in this Order or in the Sixth Schedule to the Act are altered, any reference in this Order or in the said Schedule to that district or area shall, as from such date or dates as may be fixed by the Governor, exercising his individual judgment, either for all purposes or for any particular purposes of this Order or of the said Schedule, be taken as a reference to the district or area as altered.

(2) Sub-paragraph (7) of paragraph thirteen of Part I of the Sixth Schedule to the Act (which relates to alterations in the boundaries of districts) shall cease to have effect.

23. The provisions of the Fifth and Sixth Schedules to the Act shall have effect subject to the minor amendments specified in the First Schedule to this Order.

24. The Governor of the Province may at any time by order vary the name of any territorial constituency if he deems it expedient so to do.

25. Notwithstanding anything in the Indian Income Tax Act, 1922, it shall be the duty of the appropriate income tax officers to give to any person charged by law with the duty of inquiring into the qualifications of electors such information as is necessary for the purpose of enabling him to discharge that duty.

26. Anything which under the provisions of the Act, or of this Order is required or authorised to be done by, to or before the Governor of a Province in connection with the preparation of electoral rolls or the holding of elections, or otherwise for the purpose of constituting the Legislative Assembly of the Province in due time (whether or not the Governor is to act in his discretion or to exercise his individual judgment) shall, before the commencement of Part III of the Act, be done by, to or before the Governor in Council or, in the case of Sind or Orissa, the Governor.

Part II.

MADRAS.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to VI of the Second Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

(4) All territorial constituencies not declared in the said tables to be urban constituencies shall be deemed for the purposes of the Sixth Schedule to the Act to be rural constituencies.

Women's Seats.

2. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat or some other seat of the same communal description.

Anglo-Indian Seats.

3. At a poll in the Anglo-Indian constituency when more than one seat is to be filled, a voter, while having as many votes as there are seats to be filled, shall not give more than one vote to any one candidate.

European Seats.

4. A person shall not be qualified to be chosen to fill a European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

5. At a poll in the European constituency when more than one seat is to be filled, a person, while, having as many votes as there are seats to be filled, shall not give more than one vote to any one candidate.

Indian Christian Seats.

6. A person shall not be qualified to be chosen to fill an Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some other seat in a territorial constituency.

Amendments of Part II of Sixth Schedule.

7. Subject, in the case of any woman who is the wife of a man with more than one wife, to any Act of the Provincial Legislature or rules relating to the selection of the wife to be included, application for inclusion in the electoral roll for a territorial constituency shall not be necessary in the case of women qualified by virtue of their husbands' qualifications, except where the husband's qualification is being a retired pensioned or discharged officer, non-commissioned officer, soldier or man, and, accordingly, for paragraph ten of Part II of the Sixth Schedule to the Act there shall be substituted the following paragraph:—

“10. No person shall, by virtue of sub-paragraph (c) of paragraph two, sub-paragraph (c) or sub-paragraph (d) of paragraph three, paragraph five or paragraph six of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged officer, non-commissioned officer or soldier, be included in the electoral roll for any territorial constituency, unless application is made in the prescribed manner by, or, if it is so prescribed, on behalf of, that person, that that person should be so included.”

8. After paragraph nine of Part II of the Sixth Schedule to the Act there shall be inserted the following paragraph:—

“Special qualification for Scheduled Castes.

9-A. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person who is a member of the scheduled castes shall be qualified to be included in the electoral roll for any territorial constituency if throughout the previous fasli year he occupied as owner or lessee a house in a municipality, a cantonment or an area subject to the jurisdiction of a local board, with an annual rent value of not less than eighteen rupees, or a house elsewhere with an annual rent value of not less than twelve rupees”

9. The following minor amendments shall be made in Part II of the Sixth Schedule to this Act—

- (i) in sub-paragraphs (f) and (h) of paragraph nine, for the words “is registered” there shall be substituted the words “was on the last day of the previous fasli year registered”;
- (ii) in sub-paragraph (g) of the said paragraph, for the word “holds” there shall be substituted the words “held throughout the previous fasli year”;
- (iii) in sub-paragraph (i) of the said paragraph, for the words “is a landholder” there shall be substituted the words “was on the last day of the previous fasli year a registered landholder”;

(iv) in sub-paragraph (j) of the said paragraph, for the word "holds" there shall be substituted the words "held on the last day of the previous fasli year";

(v) at the end of paragraph twelve there shall be inserted the following sub-paragraph—

"(3) References in this Part of this Schedule to, or to taxes payable in respect of land or houses relate exclusively to land or houses in the Province."

Representation of Backward Tribes.

10. (1) The seat to be filled by a representative of backward tribes shall be filled by an election in the special constituency specified in the first and second columns of Part VII of the Second Schedule to this Order.

(2) A person shall not be qualified to be included in the electoral roll for the said special constituency unless he is a member of a backward tribe, but, subject as aforesaid and subject to the other provisions of this Order, the qualifications for inclusion in the said electoral roll shall be those which are by Part II of the Sixth Schedule to the Act specified as the qualifications for inclusion in the electoral rolls for rural territorial constituencies.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some seat in a territorial constituency.

(4) In this paragraph "backward tribe" means any of the tribes specified in Part I of the Thirteenth Schedule to this Order.

Commerce, Industry and Planting Seats.

11. (1) The seats to be filled by representatives of commerce and industry and planting shall be filled by elections in the constituencies specified in the first column of the table in Part VIII of the Second Schedule to this Order.

(2) In the second column of that table are specified, in relation to each such constituency, the bodies (hereafter referred to as "the constituent bodies") membership of which is, in the manner hereafter provided to be the basis for the electoral roll for the constituency.

(3) In the third column of that table is specified the number of seats assigned to each constituency.

12. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a commerce and industry or planting constituency if he is himself a qualified member of one of the constituent bodies, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member of one of those bodies.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if he or it—

(a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and

- (b) is engaged in commerce or industry and has a place of business in the Province; and
- (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income tax on an income of not less than ten thousand rupees derived from commerce or industry; and
- (d) in the case of a corporation, has a paid up capital of not less than one lakh of rupees.

(3) For the purposes of this paragraph—

- (a) if in any financial year the partners in a firm have been separately assessed to income tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and
- (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

(4) In relation to the Madras Planters' constituency this paragraph shall have effect as if the references in sub-paragraphs (2) and (3) thereof to commerce or industry were references to planting.

13. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

14. (1) No person shall be, or be entitled to nominate persons to be, included in the electoral roll of more than one commerce and industry constituency.

(2) If at a general election a person votes in more than one commerce and industry constituency, his votes in all those constituencies shall be void.

15. A person shall not be qualified to be chosen to fill a commerce and industry or planting seat unless he is included in the electoral roll for the constituency.

16. No member of the Nagarathar Community shall be qualified to be included in the electoral roll for the Southern Indian Chamber of Commerce constituency and no Hindu joint family belonging to, or firm or corporation controlled by persons belonging to, the said community shall be entitled to nominate any person to be included in that electoral roll.

Landholders Seats.

17. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part IX of the Second Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

18. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he has resided in a house in the constituency for a period of not less than one hundred and twenty days in the previous financial year.

19. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a landholder's constituency if he is a zamindar, janmi or malikhanadar and either—

- (a) possesses an annual income, calculated as hereinafter provided, of not less than three thousand rupees derived from an estate in the Province or from a malikhana allowance from a government in British India, or partly from such an estate and partly from such an allowance; or
- (b) is registered as the janmi of land in the Province on which the assessment is not less than one thousand five hundred rupees per annum.

(2) For the purposes of the last preceding sub-paragraph—

- (a) "zamindar" means the holder of an estate;
- (b) the annual income of a zamindar shall be taken to be the annual rent value upon which the land-cess is calculated under the Madras Local Boards Act, 1920, excluding the jodi, quit-rent, peshkash or similar charge payable by him to the Government;
- (c) income derived from a portion of an estate which is not separately registered in the office of a Collector shall not be taken into account;
- (d) assessments paid on two or more parcels of land may be aggregated:

Provided that the assessment paid on any such land as is referred to in the next but one succeeding paragraph and the assessment paid on any other land shall not be aggregated unless the holder of that other land has been nominated under the said paragraph to represent the joint holders of the first-mentioned land.

20. Subject to the provisions of the next succeeding paragraph, no person claiming to be qualified to be included in the electoral roll for a landholder's constituency on account of the possession of income derived from land for which a public register is kept shall be entitled to have that income taken into account in determining his eligibility unless the land from which the income is derived stands registered in that register in his name.

21. (1) If several persons are registered as joint holders of land, a majority of the adult male persons so registered may nominate in writing any one of themselves (being a person who, if he were the sole holder of the land would be qualified for inclusion in the electoral roll) to be their representative for voting purposes and the name of that representative

alone shall be entered in the electoral roll, and, if no such nomination is made, no entry shall be made in the roll in respect of the land.

(2) Land registered under section fourteen of the Malabar Land Registration Act, 1895, in the joint names of the registered proprietor and another person is not land registered in the names of joint holders within the meaning of this paragraph.

(3) If a person nominated under this paragraph to represent a group of joint owners is himself possessed of a separate property qualification as an elector, he may elect whether to be entered in the electoral roll in his representative capacity or in his separate capacity, but he shall not be entered in both capacities.

22. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

Labour Seats.

23. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of the tables in Part X of the Second Schedule to this Order.

(2) One seat shall be filled in each of those constituencies.

(3) Of those constituencies the Railway Trade Union constituency and the Textile Workers Trade Union constituency shall be trade union constituencies, that is to say, constituencies the electoral rolls for which shall, in the manner hereafter provided, be based on membership of the trade unions mentioned in the second column of the first of the said tables.

The trade unions on membership of which the electoral roll of a labour constituency is to be based as aforesaid are hereafter referred to as "constituent trade unions."

(4) The remainder of the said constituencies shall be non-union labour constituencies and the electoral roll for each such constituency shall be based, in the manner hereafter provided on employment at a qualifying industrial establishment, that is to say, such an industrial establishment as is mentioned in relation to the constituency in the second column of the second of the said tables.

24. (1) A trade union shall be deemed to be a constituent trade union if and only if it is a recognised trade union and is certified by the Governor, exercising his individual judgment, to be such a trade union as is mentioned in the first table in the said Part of the said Schedule in relation to the particular constituency.

(2) A trade union shall be deemed for the purposes of this Order to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty

ordinary members who have paid subscriptions for the whole of that year; and

- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(3) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(4) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

25. (1) A person shall not be qualified to be included in the electoral roll for a labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(2) A person shall not be qualified to be included in the electoral roll for a labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) A person shall not be qualified to be included in the electoral roll for the Railway Trade Union constituency unless he is employed within the Province.

(4) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a trade union constituency if he—

- (a) is, and has for at least twelve months been, a member, honorary member or official of a constituent trade union; and
- (b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto;

and shall be qualified to be included in the electoral roll for a non-union labour constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month at one or more qualifying industrial establishments:

Provided that a person who in the said year has not worked as aforesaid at one qualifying industrial establishment on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

26. (1) A person shall not be qualified to be included in the electoral roll for more than one labour constituency, and any person who would but for the provisions of this paragraph be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one labour constituency, his votes in all those constituencies shall be void.

27. A person shall not be qualified to be chosen to fill a labour seat unless he either—

- (a) is entitled to vote in the choice of a member to fill that seat or some other labour seat; or
- (b) is a member, honorary member or official of a recognised trade union operating in the Province and, in the case of an ordinary member of such a union, is not in arrear with his subscription thereto.

The University Seat.

28. (1) The seat to be filled by a representative of Universities shall be filled by an election in a constituency to be called the University constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

- (a) is a member of the Senate of the Madras, the Andhra, or the Annamalai University; or
- (b) has been for at least seven years a graduate of one of those Universities and was registered as such in the University register throughout the two years immediately preceding the prescribed date.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill it

General.

29. For the purposes of this Part of this Order, a person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

PART III.

BOMBAY.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to VI of the Third Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes and the number of seats, if any, specified in the fifth column thereof shall be reserved for Marathas.

Women's Seats.

2. (1) Notwithstanding anything in paragraph one of Part III of the Sixth Schedule to the Act, a person shall not be qualified to be included in the electoral roll for a constituency specially formed for the purpose of filling a seat reserved for a woman unless he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency.

(2) A woman shall not be qualified to be chosen to fill a seat reserved for a woman unless she is entitled to vote in the choice of a member to fill that seat or some other seat of the same communal description.

European Seats.

3. A person shall not be qualified to be chosen to fill a European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

Indian Christian Seats.

4. A person shall not be qualified to be chosen to fill an Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some other seat in a territorial constituency.

Representation of Backward Tribes.

5. (1) Of the seats to be filled in the West Khandesh West general constituency, one shall be reserved for a representative of backward tribes.

(2) In addition to the persons qualified under the Sixth Schedule to the Act, a person shall, subject to the provisions of Part I of that Schedule and to any overriding provisions of Part III of that Schedule, be qualified to be included in the electoral roll for the said constituency if he is a member of a backward tribe and either—

- (a) holds in his own right, or occupies as a tenant, alienated or unalienated land in the constituency which is assessed at, or of the assessable value of, not less than four rupees land revenue per annum; or
- (b) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than four rupees per annum in respect of alienated land in the constituency; or
- (c) was at any time during the year ending on the thirty-first day of December next preceding the prescribed date actually performing in the constituency the duties of the office of a Patil or of an inferior village office, whether hereditary or not; or
- (d) is in receipt of a cash allowance or salary from the Government of not less than ten rupees per month:

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of the performance of the duties of any such office as is mentioned in this sub-paragraph be qualified to be entered in the electoral roll.

(3) A person shall not be qualified to be chosen to fill the seat to be filled by a representative of backward tribes unless he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some general seat.

(4) In this paragraph "backward tribe" means any of the tribes specified in Part II of the Thirteenth Schedule to this Order.

Commerce and Industry, Seats.

6. (1) The seats to be filled by representatives of commerce and industry shall be filled by elections in the constituencies specified in the first column of the table in Part VII of the Third Schedule to this Order.

(2) The electoral roll for each of the said constituencies shall be based, in the manner hereafter provided, on membership of the bodies (hereafter referred to as "constituent bodies") mentioned in the names of those constituencies respectively.

(3) In the second column of the said table is specified the number of seats assigned to each constituency.

7. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a commerce and industry constituency if he is himself a qualified member of one of the constituent bodies, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member of one of those bodies.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if, he or it—

- (a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and
- (b) is engaged in commerce or industry and has a place of business in the Province; and
- (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than ten thousand rupees derived from commerce or industry; and
- (d) in the case of a corporation, has a paid up capital of not less than one lakh of rupees.

(3) For the purposes of this paragraph—

- (a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and
- (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

(4) In relation to the East India Cotton Association constituency, this paragraph shall have effect as if the references in sub-paragraphs (2) and (3) thereof to commerce or industry included references to the growing of cotton.

8. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has

for at least six months been authorized to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorized to sign documents in its name in the ordinary course of its business.

9. (1) No person shall be, or be entitled to nominate persons to be, included in the electoral roll of more than one commerce and industry constituency.

(2) If at a general election a person votes in more than one commerce and industry constituency his votes in all those constituencies shall be void.

10. A person shall not be qualified to be chosen to fill a commerce and industry seat unless he is included in the electoral roll for the constituency.

11. Of the seats to be filled in the Bombay Chamber of Commerce and Bombay Presidency Trades Association constituency, one shall be reserved for a person who is included in the electoral roll for that constituency as being, or has being the nominee of, a member of the Bombay Presidency Trades Association, and sub-paragraphs (2) to (4) of paragraph sixteen of Part I of this Order shall apply to the constituency accordingly at any election at which that seat is to be filled.

Landholder's Seats.

12. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part VIII of the Third Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

13. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province.

14. Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Deccan Sardars and Inamdars constituency if his name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated the 23rd of July, 1867, or if he, on the first day of January next preceding the prescribed date, was the sole alienee of the right of the Government to the payment of rent or land revenue in respect of an entire village situate within the constituency.

15. Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Gujarat Sardars and Inamdars constituency if his name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated the 21st of September, 1909, or if he, on the first day of January next preceding the prescribed date, was the sole alienee of the right of the Government to the payment of rent or land revenue in respect of an entire village situate within the constituency, or was the sole holder on talukdari tenure of such village.

16. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

Labour Seats.

17. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of the tables in Part IX of the Third Schedule to this Order, and the number of seats to be filled in each of those constituencies shall be as specified in the third column of those tables.

(2) Of those constituencies all except the Sholapur City (Textile Labour) constituency shall be trade union constituencies, that is to say, constituencies the electoral rolls for which shall, in the manner hereafter provided, be based on membership of the trade unions mentioned in the second column of the first of the said tables.

The trade unions on membership of which the electoral roll of a labour constituency is to be based as aforesaid are hereafter referred to as "constituent trade unions".

(3) The Sholapur City (Textile Labour) constituency shall be a non-union labour constituency and the electoral roll for that constituency shall be based, in the manner hereafter provided on employment at qualifying factories, that is to say, textile factories situated in, or within five miles of the boundary of, the municipal borough of Sholapur.

18. (1) A trade union shall be deemed to be a constituent trade union if and only if it is a recognised trade union and is certified by the Governor, exercising his individual judgment, to be such a trade union as is mentioned in the first table in the said Part of the said Schedule in relation to the particular constituency.

(2) A trade union shall be deemed for the purposes of this Order to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts;

Provided that, in relation to the original preparation of electoral rolls and revision thereof within three years from the commencement of Part III of the Act, this subparagraph shall have effect as if for the words "registered as a trade union for at least one year" there were substituted the words "registered as a trade union for at least six months".

(3) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(4) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

19. (1) A person shall not be qualified to be included in the electoral roll for a labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date:

Provided that this paragraph shall not apply to members of constituent trade unions of seamen.

(2) A person shall not be qualified to be included in the electoral roll for a labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature or rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) A person shall not be qualified to be included in the electoral roll for the Railway Unions constituency unless he is employed within the Province

(4) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a trade union constituency if he—

(a) is, and has for at least twelve months been, a member, honorary member or official of a constituent trade union; and

(b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto;

and shall be qualified to be included in the electoral roll for the non-union labour constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month at one or more qualifying factories:

Provided that a person who in the said year has not worked as aforesaid at one qualifying factory on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for him enrolment and as to the production of evidence of his qualification.

20. (1) A person shall not be qualified to be included in the electoral roll for more than one labour constituency, and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included

(2) If at a general election a person votes in more than one labour constituency, his votes in all those constituencies shall be void.

21. (1) In the case of the Railway Unions constituency, and in the case of the Trade Unions of seamen constituency, all elections shall be conducted as follows—

(a) there shall be a primary election to choose an electoral college consisting of one person (being a person included in the electoral roll for the constituency) for every complete two hundred persons included in that roll; and

(b) the said electoral college shall proceed to elect persons to fill the seats to be filled at the election.

(2) At any such primary election, no person shall have more than one vote.

22. A person shall not be qualified to be chosen to fill a labour seat unless he either—

(a) is entitled to vote in the choice of a member to fill that seat or some other labour seat; or

(b) the said electoral college shall proceed to elect persons trade union operating in the Province and, in the case of an ordinary member of such a union, is not in arrear with his subscription thereto.

The University Seat.

23. (1) The seat to be filled by a representative of Universities shall be filled by an election in a constituency to be called the University constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

(a) is a member of the Senate of the Bombay University; or

(b) has been for at least seven years a graduate of that university and was registered as such in the University register throughout the two years immediately preceding the prescribed date

(3) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill it.

General.

24. For the purposes of this Part of this Order, a person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

25. For the purposes of the Fifth Schedule to the Act and of this Order "Maratha" means a Hindu belonging to any caste which at the date of this Order was officially recognised as a Maratha caste for the purposes of the rules relating to the elections to the Legislative Council or to any other caste declared by Act of the Provincial Legislature or rules to be a Maratha caste

PART IV.

BENGAL.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to VI of the Fourth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

(4) All the Anglo-Indian, European and Indian Christian constituencies shall, for the purposes of paragraph eight of Part IV of the Sixth Schedule to the Act, be deemed to be urban constituencies, and, for the purposes of paragraph nine of that Part of that Schedule, be deemed to be rural constituencies, and, for the purpose of paragraph eight of that Part of that Schedule (but not for the purposes of paragraph seven thereof), none of the said constituencies shall be deemed to be Calcutta constituencies.

Special Provision as to Scheduled Castes.

2. In a constituency in which a seat is reserved for a number of the scheduled castes, no member of those castes shall be qualified to be chosen to fill any seat in the constituency unless he was selected as a candidate for the reserved seat or seats at the primary election of candidates therefor:

Provided that this paragraph shall not apply in relation to a bye-election at which no reserved seat is to be filled.

Women's Seats.

3. A woman shall not be qualified to be chosen to fill a seat reserved for a woman unless she is entitled to vote in the choice of a person to fill that seat or some other seat of the same communal description.

Anglo-Indian Seats.

4. (1) Of the seats to be filled in the Anglo-Indian constituency one shall be reserved for a woman.

(2) At a poll in the said constituency, a person, while having as many votes as there are seats to be filled, shall not give more than one vote to any one candidate and, when the seat reserved for a woman is to be filled, the maximum number of votes which a voter may give to male candidates shall be one less than the number of seats to be filled.

European Seats.

5. At a poll in a European constituency when more than one seat is to be filled, a person, while having as many votes as there are seats to be filled, shall not give more than one vote to any one candidate.

6. A person shall not be qualified to be chosen to fill a European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

Indian Christian Seats.

7. A person shall not be qualified to be chosen to fill an Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some other seat in a territorial constituency.

Commerce, Industry, Mining and Planting Seats.

8. (1) The seats to be filled by representatives of commerce and industry shall be filled by elections in the constituencies specified in the first column of the table in Part VII of the Fourth Schedule to this Order.

(2) The electoral roll for each of the said constituencies shall be based, in the manner hereafter provided, on membership of the bodies (hereafter referred to as "constituent bodies") mentioned in the names of those constituencies respectively.

(3) In the third column of the said table is specified the number of seats assigned to each constituency.

9. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a commerce and industry, mining or planting constituency if he is himself a qualified member of the constituent body, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member of that body.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if he or it—

- (a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and
- (b) is engaged in commerce or industry and has a place of business in the Province; and
- (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than ten thousand rupees derived from commerce or industry, and
- (d) in the case of a corporation, has a paid up capital of not less than one lakh of rupees.

(3) For the purposes of this paragraph—

- (a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and
- (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

(4) In relation to the Indian Tea Association constituency, this paragraph shall have effect as if the references in sub-paragraphs (2) and (3) thereof to commerce or industry were references to planting, and, in relation to the Indian Mining Association constituency, it shall have effect as if the said references were references to mining.

10. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

11. (1) No person shall be, or be entitled to nominate persons to be, included in the electoral roll for more than one commerce and industry constituency.

(2) If at a general election a person votes in more than one commerce and industry constituency, his votes in all those constituencies shall be void.

12. A person shall not be qualified to fill a commerce and industry, mining or planting seat unless he is included in the electoral roll for the constituency.

Landholders Seats.

13. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part VIII of the Fourth Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

14. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he has a place of residence in the constituency.

15. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a landholders' constituency if during the previous year he either—

(a) within the Burdwan and Presidency divisions held in his own right as a proprietor or as a permanent tenure holder one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from a proprietor, and paid in respect thereof land revenue or rent or both amounting to not less than three thousand rupees, or road and public works cesses amounting to not less than seven hundred rupees; or

(b) within the Dacca, Rajshahi and Chittagong divisions held in his own right as a proprietor or as a permanent tenure holder one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from a proprietor, and paid in respect thereof land revenue or rent or both amounting to not less than two thousand rupees, or road and public works cesses amounting to not less than five hundred rupees:

Provided that a person shall not be qualified to be included in the electoral roll for more than one landholders' constituency, and a person who would but for this provision be qualified to be included in the electoral roll for more than one such constituency shall be included in the roll for that constituency in which he made the greatest payment of land revenue, rent or cesses, as the case may be.

(2) In this paragraph—

“estate” means land included under one entry in any of the general registers of revenue paying lands or revenue free lands prepared and maintained under the law for the time being in force by the collector of a district, and includes Government *khas mahals*, and revenue free lands not entered in any register;

“permanent tenure” means a tenure which is heritable and which is not held for a limited time;

“proprietor” means a person owning an estate or share of an estate.

(3) In determining any question whether a person possesses any qualification by virtue of the payment of land revenue or road and public works cesses—

(a) estates, permanent tenures and shares of such estates and tenures within the district of the Chittagong Hill Tracts shall be left out of account;

(b) an estate or share of an estate shall not be taken into account if it is registered in the name of some other person in the register maintained under the Land Registration Act, 1876;

(c) if an amount of land revenue or rent, or road and public works cesses, paid in respect of any share of an estate or permanent tenure is not definitely known, the district officer of the district in which the estate or tenure is situated shall estimate the amount paid in respect of the share and his decision shall be final.

(4) For the purposes of the provisions of this Order relating to landholder's seats, a mutwali or manager of a wakf estate, or a shebait of a debutter estate shall be deemed to hold that estate and make payments in respect thereof in his own right and not in a fiduciary capacity.

(5) For the purposes of the said provisions any person whose estate or tenure, or whose part of an estate or tenure, is under the Court of Wards shall be deemed to be holding it in his own right as proprietor or as tenure holder, as the case may be, and any payment of land revenue, cess or rent in respect thereof made by the Court of Wards shall be deemed to have been made by him, and any such estate or part of estate shall not be left out of account by reason that it is registered in the name of some other person.

16. If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

Labour Seats (other than tea garden labour seats).

17. (1) The seats to be filled by representatives of labour, other than the seat assigned by this Order to tea garden labour, shall be filled by elections in the constituencies specified in the first column of the first and second of the tables in Part IX of the Fourth Schedule to this Order.

(2) One seat shall be filled in each of those constituencies.

(3) Of those constituencies the constituencies mentioned in the first of the said tables shall be trade union constituencies, that is to say, constituencies the electoral rolls for which shall, in the manner hereafter provided, be based on the trade unions mentioned in the second column of that table.

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The trade unions on membership of which the electoral roll of a labour constituency is to be based as aforesaid are hereafter referred to as "constituent trade unions".

(4) The remainder of the said constituencies (hereafter referred to as "factory or colliery constituencies") shall be non-union labour constituencies and the electoral roll for each such constituency shall be based, in the manner hereafter provided on employment at qualifying industrial establishments, that is to say, in the case of the Colliery (Coal Mines) constituency, mines and, in the case of the other constituencies, perennial factories, being mines or factories situated in the area mentioned in relation to the constituency in the second column of the table.

18. (1) A trade union shall be deemed to be a constituent trade union if and only if it is a recognised trade union and is certified by the Governor, exercising his individual judgment to be, in the case of the Railway Trade Union constituency, a union the rules of which restrict ordinary membership to persons normally working on railways, and, in the case of the Water Transport Trade Union constituency, a union at least eighty per cent. of the members of which are engaged in water transport and either possess certificates of discharge under section forty-three of the Indian Merchant Shipping Act, 1923, at the Port of Calcutta or Chittagong, or are ordinarily employed as masters or members of the crew of vessels used for navigation in inland waters.

(2) A trade union shall be deemed, for the purposes of this Order, to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(3) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(4) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

19. (1) A person shall not be qualified to be included in the electoral roll for a trade union, factory or colliery labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date:

Provided that this paragraph shall not apply in relation to the Water Transport Trade Union constituency.

(2) A person shall not be qualified to be included in the electoral roll for any such labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) A person shall not be qualified to be included in the electoral roll for the Railway Trade Union constituency unless he is employed within the Province.

(4) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Railway Trade Union constituency if he—

(a) is, and has for at least twelve months been, a member, honorary member or official of a constituent trade union; and

(b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto.

(5) Subject to the provisions of this Order a person shall be qualified to be included in the electoral roll for the Water Transport Trade Union constituency if he is nominated in that behalf by the executive of a constituent trade union, and each constituent trade union shall be entitled to nominate one person for each complete five hundred ordinary members of the union who are not in arrear with their subscriptions to the union and have been members of the union for not less than six months.

(6) Subject to the provisions of this Order a person shall be qualified to be included in the electoral roll for a factory constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month at one or more qualifying industrial establishments:

Provided that a person who in the said year has not worked as aforesaid at one qualifying industrial establishment on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

(7) Subject to the provisions of this Order a person shall be qualified to be included in the electoral roll for the Colliery constituency if he has been employed for a continuous period of not less than sixty days in the year ending on the prescribed date for remuneration at a rate not greater than three hundred rupees per month at one or more qualifying industrial establishments:

Provided that a person who in the said year has not been employed as aforesaid at one qualifying establishment throughout the two months immediately preceding the prescribed date shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

20. (1) A person shall not be qualified to be included in the electoral roll for more than one of the trade union, factory and colliery constituencies, and any person who would but for the provisions of this paragraph be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one such constituency, his votes in all those constituencies shall be void.

21. (1) In the case of the Railway Trade Union constituency, all elections shall be conducted as follows—

(a) there shall be a primary election to choose an electoral college consisting of one person (being a person included in the electoral roll for the constituency) for every complete two hundred persons included in that roll; and

(b) the said electoral college shall proceed to elect persons to fill the seat to be filled at the election.

(2) At any such primary election no person shall have more than one vote.

22. A person shall not be qualified to be chosen to fill a seat in a trade union, factory or colliery constituency unless he is either—

(a) is entitled to vote in the choice of a member to fill that seat or some other labour seat; or

(b) is a member, honorary member or official of a recognised trade union operating in the Province and, in the case of an ordinary member of such a union, is not in arrear with his subscription thereto.

Tea Garden Labour Seat.

23. (1) The seat to be filled by representatives of tea garden labour shall be filled by elections in the constituencies specified in the first column of the third of the tables in Part IX of the Fourth Schedule to this Order.

(2) In the second column of that table are specified, in relation to each constituency, the tea gardens (hereafter referred to as "qualifying tea gardens") on employment in which the electoral roll for the constituency is, in the manner hereafter provided, to be based.

24. (1) At the first and every fourth subsequent general election, the seat shall be filled in the Bengal Dooars (Western) constituency, at the second and every fourth subsequent general election, the seat shall be filled in the Darjeeling Sadar constituency, at the third and every fourth subsequent general election, the seat shall be filled in the Bengal Dooars (Eastern) constituency, and at the fourth and every fourth subsequent general election, the seat shall be filled in the Kurseong constituency.

(2) Casual vacancies in the seat shall be filled in the constituency in which the seat was filled at the last preceding general election.

25. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for any of the said constituencies, if he has, during the year ending on the prescribed date, worked as a permanent employee in one or more qualifying tea gardens on not less than one hundred and eighty days:

Provided that a person who in the said year has not worked as aforesaid in one tea garden on sufficient days to qualify him for inclusion in the electoral roll shall not be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

(2) A person shall not be deemed to be working as a permanent employee in a tea garden on any day, unless he is living either within the boundary of the garden or on land provided for that purpose by the owners thereof.

26. (1) A person shall not be qualified to be chosen to fill any of the said seats, unless either—

- (a) he is a member of a qualifying tribe or caste and is entitled to vote in the choice of a member to fill some seat in the Province or some seat in the Legislative Assembly of Assam; or
- (b) he is a member of one of the qualifying tribes or castes comprised in Group II and is entitled to vote in the choice of a member to fill some seat in the Legislative Assembly of Bihar; or
- (c) he is a member of one of the qualifying tribes or castes comprised in Group III and is entitled to vote in the choice of a member to fill some seat in the Legislative Assembly of Orissa.

(2) In this paragraph, "qualifying tribe or caste" means a tribe or caste belonging to any of the following groups, that is to say—

Group I:—Bauri, Bhuiya, Bhutiya, Ghasi, Lepcha, Nepali, Paharia, Santal, Sikkimese;

Group II:—Ahir, Asor, Bauri, Bhogta, Bhuiya, Ghāsi, Gond, Ho, Kharia, Kherwar, Lohar, Mahali, Munda, Malpaharia, Santal, Sauria, Turi;

Group III:—Barhi, Bhuiya, Ganda, Golla, Gonda, Kewat, Khond, Lohar, Munda, Oraon, Pan, Santal, Savara.

The University Seats.

27. (1) The seats to be filled by representatives of Universities shall be filled by elections in constituencies to be called respectively the Calcutta University Constituency and the Dacca University Constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a University Constituency, if he has a place of residence in India and either—

- (a) is a member of the Senate of the Calcutta, or, as the case may be, of the Court of the Dacca University; or
- (b) has been for at least seven years a graduate of the University and was registered as such in the University Register throughout the two years immediately preceding the prescribed date:

Provided that for the purposes of the preparation of the original electoral rolls and of any revision thereof within three years from the commencement of Part III of the Act, the following qualification shall be substituted for qualification (b) mentioned in this sub-paragraph, that is to say—

- (b) is a graduate of the University and was registered as such in the University register, in the case of the Calcutta University, on the thirtieth day of September last preceding the prescribed date, and, in the case of Dacca University, on the eighth day of July last preceding the prescribed date.

(3) A person shall not be qualified to be chosen to fill either of the said seats unless he is entitled to vote in the choice of a member to fill it.

General.

28. For the purposes of this Part of this Order, "a place of residence" means a place where a person ordinarily and actually resides during the greater part of the year.

PART V.

THE UNITED PROVINCES.

The Territorial Constituencies

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to VI of the Fifth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

Women's Seats.

2. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat or some other seat of the same communal description.

European Seats.

3. A person shall not be qualified to be chosen to fill a European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

Indian Christian Seats.

4. A person shall not be qualified to be chosen to fill an Indian-Christian seat unless he is entitled to vote in the choice of a member to fill that seat.

Special qualification for Scheduled Castes.

5. At the end of paragraph three of Part V of the Sixth Schedule to the Act there shall be inserted the words "or, in the case of a member of the scheduled castes, if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twelve rupees per annum."

Commerce and Industry Seats.

6. (1) The seats to be filled by representatives of commerce and industry shall be filled by elections in the constituencies specified in the first column of the table in Part VII of the Fifth Schedule to this Order.

(2) The electoral roll for each of the said constituencies shall be based, in the manner hereafter provided, on membership of the bodies (hereafter referred to as "constituent bodies") mentioned in the names of those constituencies respectively.

(3) In the third column of that table is specified the number of seats assigned to each constituency.

7. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a commerce and industry

constituency if he is himself a qualified member of a constituent body, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member of a constituent body.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if he or it—

- (a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and
 - (b) is engaged in commerce or industry and has a place of business in the Province; and
 - (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than ten thousand rupees derived from commerce or industry; and
 - (d) in the case of a corporation, has a paid up capital of not less than one lakh of rupees.
- (3) For the purposes of this paragraph—
- (a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and
 - (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

8. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

9. (1) No person shall be, or be entitled to nominate persons to be, included in the electoral roll of more than one commerce and industry constituency.

(2) If at a general election a person votes in more than one commerce and industry constituency, his votes in all those constituencies shall be void.

10. A person shall not be qualified to be chosen to fill a commerce and industry seat unless he is included in the electoral roll for the constituency.

Landholders Seats.

11. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part VIII of the Fifth Schedule to this Order.

(2) The extent of each such constituency and the number of seats to be filled in it shall be as specified in the second and third columns of that table respectively.

12. Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll—

- (a) for the British Indian Association of Oudh constituency, if he is resident in the Province and a member of that Association;
- (b) for the Agra Province Zamindars' Association, Allahabad constituency, if he is resident in the Province, is a member of that Association, and in the revenue year preceding that in which the prescribed date falls was assessed in respect of land in the Province to the payment of land revenue of an amount not less than five thousand rupees.

13. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

14. At a poll in a landholders' constituency when more than one seat is to be filled, a voter, while having as many votes as there are seats to be filled, shall not give more than one vote to any one candidate.

Labour Seats.

15. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of the tables in Part IX of the Fifth Schedule to this Order.

(2) One seat shall be filled in each of those constituencies.

(3) The electoral roll for the Trade Union Constituency shall, in the manner hereafter provided, be based on membership of trade unions.

The trade unions on membership of which the electoral roll for the said constituency is to be based as aforesaid are hereafter referred to as "constituent trade unions".

(4) The remainder of the said constituencies shall be non-union labour constituencies and the electoral roll for each such constituency shall be based, in the manner hereafter provided on employment at qualifying factories, that is to say, factories situated in the areas mentioned in relation to the constituency in the second column of the second of the said tables.

16. (1) A trade union shall be deemed to be a constituent trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union operating in the Province and existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and

- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(2) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(3) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

17. (1) A person shall not be qualified to be included in the electoral roll for a labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(2) A person shall not be qualified to be included in the electoral roll for a labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Trade Union constituency if he—

- (a) is, and has for at least twelve months been, a member, honorary member or official of a constituent trade union; and
- (b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto;

and shall be qualified to be included in the electoral roll for a non-union labour constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month at one or more qualifying factories:

Provided that—

- (a) a person who in the said year has not worked as aforesaid at one qualifying factory on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification;
- (b) a member, honorary member or official of a constituent trade union shall not be qualified to be included in the electoral roll for any labour constituency other than the Trade Union constituency.

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18. (1) A person shall not be qualified to be included in the electoral roll for more than one labour constituency, and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one labour constituency, his votes in all those constituencies shall be void.

19. A person shall not be qualified to be chosen to fill a labour seat unless he is entitled to vote in the choice of a member to fill that seat or some other labour seat.

The University Seat.

20. (1) The seat to be filled by a representative of Universities shall be filled by an election in a constituency to be called the University constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

(a) is a member of the Court, Executive Council or Academic Council of the Allahabad or the Lucknow University, or of the Senate, Executive Council or Academic Board of the Agra University; or

(b) has been for at least seven years a graduate of one of those Universities and was registered as such in the University Register throughout the two years immediately preceding the prescribed date.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill it.

General.

21. For the purposes of this part of this Order, a person shall be deemed to be resident in any area if he ordinarily lives in that area, or maintains a dwelling-house therein ready for occupation in which he occasionally dwells.

PART VI.

THE PUNJAB.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to VII of the Sixth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part IV of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

Women's Seats.

2. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women.

3. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat, or some other seat of the same communal description.

The European Seat.

4. A person shall not be qualified to be chosen to fill the European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

Indian Christian Seats.

5. A person shall not be qualified to be chosen to fill an Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some other seat in a territorial constituency.

Commerce and Industry Seat.

6. (1) The seat to be filled by a representative of commerce and industry shall be filled by an election in the constituency specified in the first column of the table in Part VIII of the Sixth Schedule to this Order.

(2) In the second column of that table are specified the bodies (hereafter referred to as "the constituent bodies") membership of which is, in the manner hereafter provided, to be the basis for the electoral roll for the constituency.

7. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the commerce and industry constituency if he is himself a qualified member of one of the constituent bodies, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member of one of those bodies.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if he or it—

- (a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and
- (b) is engaged in commerce or industry and has a place of business in the Province; and
- (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than ten thousand rupees derived from commerce or industry; and
- (d) in the case of a corporation has a paid up capital of not less than one lakh of rupees.

(3) For the purposes of this paragraph—

- (a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and
- (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

8. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preced-

ing paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

9. A person shall not be qualified to be chosen to fill the commerce and industry seat unless he is included on the electoral roll for the constituency.

Landholders Seats.

10. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part IX of the Sixth Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

11. A person shall not be qualified to be included in the electoral roll for the Tumandars' constituency unless he is resident in the Province, or to be included in the electoral roll of any other landholder's constituency unless he is resident in that constituency.

12. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Tumandars' constituency if he is a Tumandar recognised by the Government, or a person performing the duties of a Tumandar with the sanction of the Government, and shall be qualified to be included in the electoral roll for any other landholders' constituency if he is—

(a) the owner of land in the Province assessed to land revenue of not less than five hundred rupees per annum; or

(b) an assignee of land revenue in the Province amounting to not less than five hundred rupees per annum.

13. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

Labour Seats.

14. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of tables in Part X of the Sixth Schedule to this Order.

(2) One seat shall be filled in each of those constituencies.

(3) The electoral roll for the Trade Union constituency shall, in the manner hereafter provided, be based on membership of the North Western Railway Union.

(4) The remainder of the said constituencies shall be non-union labour constituencies and the electoral roll for each such constituency shall be based, in the manner hereafter provided, on employment at qualifying industrial establishments, that is to say, factories and mines situated in the areas mentioned in relation to the constituency in the second column of the second of the said tables.

15. (1) A person shall not be qualified to be included in the electoral roll for a labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(2) A person shall not be qualified to be included in the electoral roll for a labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the trade union constituency if he is employed within the Province and—

(a) is, and has for at least twelve months been, a member, honorary member or official of the North Western Railway Union; and

(b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto;

and shall be qualified to be included in the electoral roll for a non-union labour constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month at one or more qualifying industrial establishments:

Provided that a person who in the said year has not worked as aforesaid at one qualifying industrial establishment on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

16. (1) A person shall not be qualified to be included in the electoral roll for more than one labour constituency, and any person who would but for the provisions of this paragraph be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one labour constituency, his votes in all those constituencies shall be void.

17. (1) A person shall not be qualified to be chosen to fill a labour seat unless he either—

(a) is entitled to vote in the choice of a member to fill that seat or some other labour seat; or

(b) is a member, honorary member or official of a recognised trade union operating in the Province and, in the case of an ordinary member of such a union, is not in arrear with his subscription thereto.

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(2) A trade union shall for the purposes of this Order be deemed to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscription for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the Registrar of Trade Unions and with respect to the audit of its accounts.

(3) The Governor, exercising his individual judgment, shall from time to time re-consider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(4) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

The University Seat.

18. (1) The seat to be filled by a representative of Universities shall be filled by an election in a constituency to be called the University constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

- (a) is a member of the Senate of the Punjab University; or
- (b) has been for at least seven years a graduate of that University and was registered as such in the University Register throughout the two years immediately preceding the prescribed date.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote at an election to fill it.

General.

19. For the purposes of this Part of this Order, proof that a person owns a family dwelling-house, or a share in a family dwelling-house, in an area and that that house has not during the twelve months preceding the prescribed date been let on rent, either in whole or in part, shall be sufficient evidence that that person is resident in the area.

PART VII.

BIHAR.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to V of the Seventh Schedule to this Order, the extent thereof shall be as specified in the second

column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth and fifth columns of the table shall be reserved for members of the scheduled castes, and for representatives of backward tribes, respectively.

(4) At a poll in a constituency in which a seat is reserved for a representative of backward tribes, no person shall have more than one vote.

Women's Seats.

2. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat, or some other seat of the same communal description.

European Seats.

3. A person shall not be qualified to be chosen to fill a European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

The Indian Christian Seat.

4. The Indian Christian seat shall be filled by an election by an electoral college consisting of forty persons nominated for the purposes of the election by the Chota Nagpur Catholic Sabha and forty persons nominated for the purposes of the election by the Bihar and Orissa Christian Council.

5. A person shall not be qualified to be chosen to fill the Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some seat in a territorial constituency.

The Backward Tribes Seats.

6. (1) A person shall not be qualified to be chosen to fill a seat reserved for a representative of backward tribes, unless he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some general seat.

(2) A person shall be deemed to be a member of a backward tribe if and only if he satisfies the conditions specified in Part III of the Thirteenth Schedule to this Order.

Special qualification for Scheduled Castes.

7. In paragraph two of Part VII of the Sixth Schedule to the Act, after the words "or is assessed, otherwise than in the Santal Parganas, to chaukidari tax of an annual amount of not less than nine annas" there shall be inserted the words "or, in the case of a member of the scheduled castes, of an annual amount of not less than six annas".

Commerce, Industry, Mining and Planting Seats.

8. (1) The seats to be filled by representatives of commerce and industry, mining and planting shall be filled by elections in the constituencies specified in the first column of the table in Part VII of the Seventh Schedule to this Order.

(2) The electoral roll for each of the said constituencies shall be based, in the manner hereafter provided, on membership of the bodies (hereafter referred to as "constituent bodies") mentioned in the names of those constituencies respectively.

(3) One seat shall be filled in each of those constituencies.

9. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a commerce and industry, mining or planting constituency if he is himself a qualified member of the constituent body, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member of that body.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if he or it—

- (a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and
- (b) is engaged in commerce or industry and has a place of business in the Province; and
- (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than five thousand rupees derived from commerce or industry; and
- (d) in the case of a corporation, has a paid up capital of not less than fifty thousand rupees.

(3) For the purposes of this paragraph—

- (a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and
- (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

(4) In relation to the Bihar Planters Association constituency, this paragraph shall have effect as if the references in sub-paragraphs (2) and (3) thereof to commerce or industry were references to planting, and, in relation to the Indian Mining Association and Federation constituencies, it shall have effect as if the said references were references to mining.

10. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secre-

tary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

11. (1) No person shall be, or be entitled to nominate persons to be, included in the electoral roll of more than one of the commerce and industry, mining and planting constituencies.

(2) If at a general election a person votes in more than one of the commerce and industry, mining and planting constituencies, his votes in all those constituencies shall be void.

12. A person shall not be qualified to fill a commerce and industry, mining or planting seat unless he is included in the electoral roll for the constituency.

Landholders' Seats.

13. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part VIII of the Seventh Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

14. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he resides therein.

15. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a landholder's constituency if—

- (a) in the case of the Patna Division Landholders constituency, the Tihut Division Landholders constituency or the Bhagalpur Division Landholders constituency, he holds as proprietor or tenure-holder land in the Province for which he is liable to pay land revenue amounting in the aggregate to not less than four thousand rupees per annum, or local cesses amounting in the aggregate to not less than one thousand rupees per annum;
- (b) in the case of the Chota Nagpur Division Landholders constituency, he holds as proprietor land in the Province for which he is liable to pay land revenue amounting in the aggregate to not less than six thousand rupees per annum or local cesses amounting in the aggregate to not less than five hundred rupees per annum, or holds as tenure-holder land in the Province for which he is liable to pay local cesses amounting in the aggregate to not less than seven hundred and fifty rupees per annum.

(2) For the purposes of this paragraph—

- (a) only such estates and shares of estates as are held by a person in his own right and, so far as they are registrable in registers kept under the Land Registration Act, 1876 (Bengal Act VII of 1876), are registered therein in his own name, shall be taken into account; and
- (b) if any question arises as to the amount paid by a person in respect of any such share of an estate, the District Officer of the district in which the estate is situate shall estimate the amount paid in respect of that share, and his decision shall be final.

16. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency and any person who

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would but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

Labour Seats.

17. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of the tables in Part IX of the Seventh Schedule to this Order.

(2) One Seat shall be filled in each of those constituencies:

Provided that—

- (a) at the first and every fourth subsequent general election no seat shall be filled in the Trade Union (Mining) constituency;
- (b) at the second and every fourth subsequent general election no seat shall be filled in the Hazaribagh Mining Labour constituency;
- (c) at the third and every fourth subsequent general election no seat shall be filled in the Jamshedpur Factory Labour constituency;
- (d) at the fourth and every fourth subsequent general election no seat shall be filled in the Monghyr cum Jamalpur Factory Labour constituency,

and casual vacancies in any seat shall be filled in the constituency in which the seat was filled at the last previous general election.

(3) Of those constituencies the Trade Union (Mining) constituency shall be a trade union constituency, that is to say, a constituency the electoral rolls for which shall, in the manner hereafter provided, be based on membership of certain trade unions.

The trade unions on membership of which the electoral roll of the said constituency is to be based aforesaid are hereafter referred to as "constituent trade unions".

(4) The remainder of the said constituencies shall be non-union labour constituencies and the electoral roll for each such constituency shall be based, in the manner hereafter provided on employment at qualifying factories or mines, that is to say, in the case of the two factory labour constituencies, a factory and in the case of the other constituency, a mine, being in any case a factory or mine situated in the area mentioned in relation to the constituency in the second column of the second of the said tables.

18. (1) A trade union shall be deemed to be a constituent trade union if and only if it is a recognised trade union and is certified by the Governor, exercising his individual judgment, to be a mining trade union operating in the Dhanbad sub-division.

(2) A trade union shall be deemed for the purposes of this Order to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment,—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and

- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(3) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(4) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

19. (1) A person shall not be qualified to be included in the electoral roll for a labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(2) A person shall not be qualified to be included in the electoral roll for a labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the trade union constituency if he—

- (a) is, and has for at least twelve months been a member, honorary member or official of a constituent trade union; and
- (b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto;

and shall be qualified to be included in the electoral roll for a non-union labour constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month, at one or more qualifying factories or mines:

Provided that a person who in the said year has not worked as aforesaid at one qualifying factory or one qualifying mine on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

20. (1) A person shall not be qualified to be included in the electoral roll for more than one labour constituency, and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one labour constituency, his votes in all those constituencies shall be void.

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21. A person shall not be qualified to be chosen to fill a labour seat unless he either—

- (a) is entitled to vote in the choice of a member to fill that seat or some other labour seat; or
- (b) is a member, honorary member or official of a recognised trade union operating in the Province, and, in the case of an ordinary member of such a union, is not in arrear with his subscription thereto.

The University Seat.

22. (1) The seat to be filled by a representative of Universities shall be filled by an election in a constituency to be called the University constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

- (a) is a member of the Senate or of the Syndicate of the Patna University; or
- (b) has been for at least seven years a graduate of that University and was registered as such in the University register throughout the two years immediately preceding the prescribed date.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill it.

General.

23. For the purposes of this Part of this Order, a person shall be deemed to reside in an area if he ordinarily lives therein, or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

PART VIII.

The Central Provinces and Berar.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to V of the Eighth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number or seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

(4) The Anglo-Indian and European constituencies shall be deemed to be rural constituencies.

Women's Seats.

2. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat or some other seat of the same communal description.

The European Seat.

3. A person shall not be qualified to be chosen to fill the European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

Minor Amendment of Sixth Schedule.

4. In sub-paragraph (1) of paragraph ten of Part VIII of the Sixth Schedule to the Act, after the definition of "land revenue" there shall be inserted the following definition:—

"municipal tax" means a tax imposed under the provisions of the Central Provinces Municipalities Act, 1922, or of that Act as applied to Berar."

Backward Tribes Seat.

5. (1) The seat to be filled by a representative of backward tribes shall be filled by an election in the special constituency specified in the first and second columns of Part VI of the Eighth Schedule to this Order.

(2) A person shall not be qualified to be included in the electoral roll for the said special constituency unless he is a member of a backward tribe, but, subject as aforesaid and subject to the provisions of this Order, the qualifications for inclusion in the said electoral roll shall be those which are by Part VIII of the Sixth Schedule to the Act specified as the qualifications for inclusion in the electoral rolls for rural constituencies.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some seat in a territorial constituency in the Province.

(4) In this paragraph "backward tribe" means any of the tribes specified in Part IV of the Thirteenth Schedule to this Order.

Commerce and Industry Seats.

6. (1) The seats to be filled by representatives of commerce and industry shall be filled by elections in the constituencies specified in the first column of the table in Part VII of the Eighth Schedule to this Order, and the extent of those constituencies shall be as specified in the second column of that table.

(2) One seat shall be filled in each of the said constituencies.

7. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a commerce and industry constituency if he is himself qualified as hereafter provided in this paragraph or is the nominee in that behalf of a firm, Hindu joint family or corporation which is so qualified.

(2) For the purposes of this paragraph, an individual, firm, Hindu joint family or corporation shall be deemed to be so qualified as aforesaid if, and only if he or it—

- (a) is engaged in commerce or industry and has a place of business in the constituency; and
- (b) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than ten thousand rupees derived from commerce or industry; and
- (c) in the case of a corporation, has a paid up capital of not less than fifty thousand rupees.

(3) For the purposes of this paragraph—

(a) if in any financial year the partners in a firm have been separately assessed to income tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and

(b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

(4) References in sub-paragraphs (2) and (3) of this paragraph to industry shall be deemed to include references to mining.

8. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

9. (1) No person shall be, or be entitled to nominate persons to be included in the electoral roll of more than one commerce and industry constituency.

(2) If at a general election a person votes in more than one commerce and industry constituency, his votes in all those constituencies shall be void.

10. A person shall not be qualified to be chosen to fill a commerce and industry seat unless he is included in the electoral roll for the constituency.

Landholders' Seats.

11. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part VIII of the Eighth Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

12. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he has a place of residence in the constituency.

13. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Northern Landholders' constituency or the Southern Landholders' constituency if he either—

(a) is the holder of a hereditary title recognised by the Government of India and holds in proprietary right agricultural land in the constituency; or

(b) is the owner of an estate in the constituency; or
 (c) holds in proprietary right land in the constituency of which the assessed or assessable land revenue or kamil-jama is not less than three thousand rupees per annum;
 and shall be qualified to be included in the electoral roll for the Berar landholders' constituency if he either—

- (a) is the holder of a hereditary title recognised by the Government of India and holds agricultural land in the constituency in other than tenancy right; or
 (b) is a Jagirdar, Palampatdar, Izardar, Inamdar, registered deshmukh or registered deshpandia, holding in other than tenancy right land in the constituency, the assessed or assessable land revenue of which is not less than five hundred rupees per annum; or
 (c) holds in other than tenancy right land in the constituency of which the assessed or assessable land revenue is not less than one thousand rupees per annum.

(2) Sub-paragraph (2) of paragraph ten of Part VIII of the Sixth Schedule to the Act shall apply for the purpose of determining whether a person holds land in other than tenancy right.

14. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

Labour Seats.

15. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of the tables in Part IX of the Eighth Schedule to this Order.

(2) One seat shall be filled in each of those constituencies.

(3) Of those constituencies the Trade Union labour constituency shall be a trade union constituency, that is to say, a constituency the electoral rolls for which shall, in the manner hereafter provided, be based on membership of certain trade unions.

The trade unions or membership of which the electoral roll of the said constituency is to be based as aforesaid are hereafter referred to as "constituent trade unions".

(4) The other labour constituency shall be a non-union labour constituency and the electoral roll therefor shall be based, in the manner hereafter provided on employment at qualifying factories, that is to say, factories situated in the area mentioned in relation to the constituency in the second column of the second of the said tables.

16. (1) A trade union shall be deemed to be a constituent trade union if and only if it is a recognised trade union and is certified by the Governor, exercising his individual judgment, to be a trade union operating in the Nagpur Municipality.

(2) A trade union shall be deemed for the purposes of this Order to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment,—

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- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes ; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year ; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year ; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(3) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(4) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

17. (1) A person shall not be qualified to be included in the electoral roll for a labour constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(2) A person shall not be qualified to be included in the electoral roll for a labour constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(3) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the trade union constituency if he—

- (a) is, and has for at least twelve months been, a member, honorary member or official of a constituent trade union ; and
- (b) is not, in the case of an ordinary member of the union, in arrear with his subscription thereto ; and
- (c) has lived in the Nagpur municipality for at least six months during the year ending on the prescribed date ;

and shall be qualified to be included in the electoral roll for the non-union labour constituency if on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date he has worked for remuneration at a rate not greater than three hundred rupees per month, at one or more qualifying factories :

Provided that a person who in the said year has not worked as aforesaid at one qualifying factory on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

18. (1) A person shall not be qualified to be included in the electoral roll for more than one labour constituency, and any person who would but for the provisions of this paragraph be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one labour constituency, his votes in all those constituencies shall be void.

19. A person shall not be qualified to be chosen to fill a labour seat unless he either—

(a) is entitled to vote in the choice of a member to fill that seat or the other labour seat, or

(b) is a member, honorary member or official of a recognised trade union operating in the Province and, in the case of an ordinary member of such a union, is not in arrear with his subscription thereto.

The University Seat.

20. (1) The seat to be filled by a representative of Universities shall be filled by an election in a constituency to be called the University constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

(a) is a member of the Court of the Nagpur University; or

(b) has been for at least seven years a graduate of that University and was registered as such in the University Register throughout the two years immediately preceding the prescribed date.

(3) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill it.

General.

21. For the purpose of this Part of this Order, a person shall be deemed to have a place of residence in an area if, and only if, he either—

(a) has actually dwelt in a house within the area for not less than one hundred and eighty days in the aggregate during the previous financial year; or

(b) has maintained a house within the area for an aggregate period of not less than one hundred and eighty days during that year as a dwelling for himself in charge of his dependants or servants and has visited that house during that year.

PART IX.

Assam.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to V of the Ninth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The Women's (shillong) constituency mentioned in Part III of the said Schedule is a constituency specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of the general constituencies, of the total number of seats to be filled in each constituency the number of the Seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

The Women's Seat.

2. A woman shall not be qualified to be chosen to fill the seat reserved for women unless she is entitled to vote in the choice of a member to fill some seat.

The European Seat.

3. A person shall not be qualified to be chosen to fill the European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

The Indian Christian Seat.

4. A person shall not be qualified to be chosen to fill the Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some other seat.

Minor Amendment of Part IX of Sixth Schedule.

5 Sub-paragraph (b) of paragraph nine of Part IX of the Sixth Schedule to the Act shall cease to have effect and at the end of that paragraph there shall be inserted the following paragraph—

"Special Provisions as to Shillong.

9A. In the case of any territorial constituency comprising any part of shillong, any reference in this Part of this Schedule to "the constituency" shall be construed as including a reference to so much of the areas under the jurisdiction of the Shillong Municipal Board and the Shillong Cantonment Authority as is not part of British India, and any reference to municipal or cantonment rates or taxes shall be construed as including a reference to any such rates or taxes assessed by or paid to that Board or that Authority in the exercise of any jurisdiction exercised by them in relation to areas outside British India."

Backward Areas and Tribes Seats.

6. (1) The seats to be filled by representatives of backward areas and backward tribes shall be filled by elections in the special constituencies specified in the first column of the tables in Parts VI and VII of the Ninth Schedule to this Order and the extent of those constituencies shall be as specified in the second column of those tables.

(2) One seat shall be filled in each of those constituencies.

7. (1) A person shall not be qualified to be included in the electoral roll for any of the Backward Tribal (Plains) Constituencies unless he is a member of a backward tribe, but, subject as aforesaid and subject to the provisions of this Order, the qualifications for inclusion in the said electoral rolls shall be those which are by Part IX of the Sixth Schedule to the Act specified as the qualifications for inclusion in the electoral rolls for general constituencies.

(2) A person shall not be qualified to be chosen to fill a seat in any constituency mentioned in this paragraph unless he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some other seat.

(3) In this paragraph "backward tribes" means one of the tribes or communities specified in Part V of the Thirteenth Schedule to this Order.

8. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Garo Hills (North) constituency or the Garo Hills (South) constituency if he is a nokma in the constituency who is recognised as such by the Government.

(2) A person shall not be qualified to be chosen to fill a seat in either of the said constituencies unless he has a place of residence in one or other of them.

9. (1) A person shall not be qualified to be included in the electoral roll for the Shillong constituency or the Jowai constituency if he is entitled to be included in the electoral roll for any territorial constituency other than the women's constituency.

(2) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for either of the said constituencies if he has a place of residence in the constituency and either—

- (a) he has in the previous financial year been assessed to income tax, or to house tax, or to an aggregate amount of not less than two rupees in respect of municipal or cantonment rates or taxes in the constituency, or would have been so assessed to house tax had he not been exempt therefrom by an order of a competent authority; or
- (b) he has passed the Middle School Leaving Certificate Examination, or any examination prescribed as equivalent thereto; or
- (c) he is a retired, pensioned or discharged officer, noncommissioned officer, soldier or man of His Majesty's regular military forces, of the Assam Rifles or of a British Indian police force, not being an officer, non-commissioned officer, soldier or man who was discharged or dismissed for disciplinary reasons; or
- (d) in the case of a woman, she is the pensioned widow or pensioned mother of a person who was a non-commissioned officer, soldier or man of His Majesty's regular military forces, of the Assam Rifles or of a British Indian police force.

(3) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for the Shillong constituency if he is the owner of land in any British village of the Shillong sub-division outside the Shillong municipality and cantonment the land revenue on which has been assessed, or is assessable, at not less than two rupees eight annas per annum.

(4) A Khasi or Synteng (Pnar) woman who is qualified to be included in the electoral roll for either of the said constituencies may, if she thinks fit, nominate one man to be included in the electoral roll for that constituency in her stead, and any man so nominated shall be included accordingly.

Except within the Shillong municipality and cantonment and the area in which the Shillong Municipal Board and the Shillong Cantonment Authority exercise jurisdiction the same man may be nominated by more than one woman and notwithstanding anything in Part I of this Order may, in respect of each nomination, be separately entered in the roll and exercise a separate right to vote.

(5) A person shall not be qualified to be chosen to fill a seat in either of the said constituencies unless he is entitled to vote in the choice of a member to fill one or other of those seats.

(6) Paragraph 9A of Part IX of the Sixth Schedule to the Act shall apply in relation to the Shillong constituency as it applies in relation to territorial constituencies.

10. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Mikir Hills constituency if he is a village headman of a village in the constituency who is recognised as such by the Government.

(2) A person shall not be qualified to be chosen to fill a seat in the said constituency unless he has a place of residence in the constituency.

Commerce and Industry, and Planting Seats.

11. (1) Of the seats to be filled by representatives of the interests of Commerce and Industry, and Planting—

- (a) seven shall be filled by representatives of European planting;
- (b) two shall be filled by representatives of Indian planting;
- (c) one shall be filled by a representative of European Commerce and Industry;
- (d) one shall be filled by representative of Indian Commerce and Industry.

(2) The said seats shall be filled by elections in the constituencies mentioned in the first column of the tables in Parts VIII and IX of the Ninth Schedule to this Order, and the extent of those constituencies and the number of seats to be filled in them respectively, shall be as specified in the second and third columns of those tables.

12. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll—

- (a) for the European Planting Constituency, if he is the superintendent or manager of, or an engineer or medical officer employed on, any tea estate in the constituency which is under European control;
- (b) for either of the Indian Planting Constituencies, if he is the superintendent or manager of, or an engineer or medical officer employed on, any tea estate in the constituency in question which is not under European control.

(2) Notwithstanding anything in the last foregoing sub-paragraph but subject to the other provisions of this Order, where a tea estate is owned otherwise than by a corporation, the proprietor of the estate, or, where there are several co-proprietors, a co-proprietor nominated in that behalf by co-proprietors owning more than half the proprietary interests in the estate, shall be entitled, on making application within the prescribed time and in the prescribed manner, to be included in the electoral roll for the appropriate planting constituency in lieu of the superintendent or manager of the estate:

Provided that no proprietor or co-proprietor shall so be included in an electoral roll, unless he has a place of residence in the Province.

(3) Tea estates with less than seventy-five acres of tea under actual cultivation shall be left out of account for the purposes of this paragraph, and references therein to tea estates shall be construed accordingly.

13. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the European commerce and industry constituency if either—

- (a) he is a European and carries on business in the constituency on his own account and not in partnership with any other person and was in any one of the five financial years preceding that in which the prescribed date falls assessed to income tax on an income derived from commerce or industry of not less than ten thousand rupees; or
 - (b) he is nominated in that behalf by a firm under European control carrying on business in the constituency which in any one of the said years was so assessed to income-tax; or
 - (c) he is the nominee in that behalf of a qualified company.
- (2) In this paragraph "qualified company" means a company incorporated by or under the law of any part of His Majesty's Dominions which—

- (a) is under European control;
- (b) is not principally engaged in the tea industry;
- (c) has a place of business in the constituency;
- (d) has a paid up capital of not less than one lakh of rupees; and
- (e) has in the constituency capital assets, other than money, to the value of at least twenty-five thousand rupees.

14. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the Indian commerce and industry constituency if either—

- (a) he carries on business in the constituency on his own account and not in partnership with any other person and was in any one of the five years preceding that in which the prescribed date falls assessed to income tax on an income derived from commerce or industry of not less than ten thousand rupees;
- (b) he is nominated in that behalf by a firm not under European control or a Hindu joint family being a firm or family carrying on business in the constituency which was in any one of the said years so assessed to income-tax;
- (c) he is, or is nominated in that behalf by, the owner of a factory not under European control which is situate in the constituency and is subject to the provisions of the Indian Factories Act, 1934, not being a tea factory; or
- (d) he is nominated in that behalf by a qualified company.

(2) In this paragraph "qualified company" means a company incorporated under the Indian Companies Act, 1913, which is not under European control and is not principally engaged in the tea industry and either—

- (a) has a paid-up capital of not less than fifty thousand rupees, has its registered office in Assam and is duly registered in the office of the Registrar of Companies at Shillong; or
- (b) has a paid-up capital of not less than one lakh of rupees and has in the constituency capital assets, not including money, to the value of not less than twenty-five thousand rupees.

15. (1) A firm, company or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the two last preceding paragraphs, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, company or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a company unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

16. (1) A person shall not be qualified to be included in the electoral roll for more than one planting constituency, and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one such constituency, his votes in all those constituencies shall be void.

17. A person shall not be qualified to be chosen to fill a planting seat, or a commerce and industry seat, unless he is included in the electoral roll for the constituency.

18. Acts of the Provincial Legislature or rules may contain provisions for defining the estates, companies and firms which are to be treated as being under European control or not under European control for the purposes of this Part of this Order.

Labour seats.

19. (1) The seats to be filled by representatives of labour shall be filled by elections in the constituencies specified in the first column of the tables in Part X of the Ninth Schedule to this Order.

(2) In the second column of the said tables are specified, in relation to each constituency, the tea gardens (hereafter referred to as "qualifying tea gardens") on employment in which the electoral roll for the constituency is, in the manner hereafter provided, to be based.

(3) References in those tables to gardens within a specified radius from any point or within a specified area include gardens the greater part of which is within that radius from that point or within that area.

20. (1) At the first and every third subsequent general election, one of the said seats shall be filled in each of the following constituencies, that is to say, the Doom Dooma constituency, the Jorhat constituency, the Thakurbari constituency and the Silchar constituency.

(2) At the second and every third subsequent general election, one of the said seats shall be filled in each of the following constituencies, that is to say, the Tinsukhia constituency, the Nazira constituency, the Biswanath constituency, and the Srimangal constituency.

(3) At the third and every third subsequent general election, one of the said seats shall be filled in each of the remaining labour constituencies.

(4) Casual vacancies in any of the said seats shall be filled in the constituency in which the seat was filled at the last preceding general election.

21. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for any of the said constituencies, if he has, during the year ending on the prescribed date, worked as a permanent employee in one or more qualifying tea gardens on not less than one hundred and eighty days:

Provided that a person who in the said year has not worked as aforesaid in one tea garden on sufficient days to qualify him for inclusion in the electoral roll shall not be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

(2) A person shall not be deemed to be working as a permanent employee in a tea garden on any day unless he is living either within the boundary of the garden or on land provided for that purpose by the owners thereof.

22. (1) A person shall not be qualified to be chosen to fill any of the said seats, unless either—

- (a) he is a member of a qualifying tribe or caste and is entitled to vote in the choice of a member to fill some seat in the Province; or
- (b) he is a member of one of the qualifying tribes or castes comprised in Group I and is entitled to vote in the choice of a member to fill some seat in the Legislative Assembly of Bengal;
- (c) he is a member of one of the qualifying tribes or castes comprised in Group II and is entitled to vote in the choice of a member to fill some seat in the Legislative Assembly of Bihar; or
- (d) he is a member of one of the qualifying tribes or castes comprised in Group III and is entitled to vote in the choice of a member to fill some seat in the Legislative Assembly of Orissa.

(2) In this paragraph "qualifying tribal caste" means a tribal caste belonging to any of the following groups, that is to say,—

Group I.—Bauri, Bhuyia, Bhuttiya, Ghasi, Lepcha, Nepali, Paharia, Santal, Sikkimese:

Group II.—Ahir, Asor, Bauri, Bhogta, Bhuiya, Ghasi, Gond, Ho, Kharia, Kherwar, Lohar, Mahali, Munda, Malpaharia, Santal, Sauria, Turi:

Group III.—Barhi, Bhuyia, Ganda, Golla, Gonda, Kewat, Khond, Lohar, Munda, Oraon, Pan, Santal, Savara.

General.

23. For the purposes of this Part of this Order, a person shall be deemed to have a place of residence in an area, if he ordinarily lives therein or has his family dwelling place therein and occasionally occupies it.

PART X.

The North West Frontier Province.

The Territorial Constituencies.

1. The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to III of the Tenth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the number of seats to be filled in each of them shall be as specified in the third column of those tables.

Landholders' Seats.

2. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part IV of the Tenth Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

3. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he is resident in the constituency.

4. Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a landholders' constituency if he—

- (a) is the owner of land in the Province assessed to land revenue of not less than two hundred and fifty rupees per annum; or
- (b) is the assignee of land revenue in the Province amounting to not less than two hundred and fifty rupees per annum; or
- (c) is the recipient of a Muajib, inam, barat or pension sanctioned by orders passed in settlement operations amounting to not less than two hundred and fifty rupees per annum; or
- (d) in the case of the Peshawar Landholders constituency, owns in the Province not less than two hundred acres of irrigated land or not less than four hundred acres of unirrigated land:

Provided that for the purposes of this paragraph a person shall be deemed to own at least two hundred acres of irrigated land if he owns irrigated and unirrigated land and the sum of the area of that irrigated land and half the area of that unirrigated land is not less than two hundred acres.

5. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency, and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

General.

6. For the purposes of this Part of this Order, proof that a person or, in the case of a woman, her husband, owns a family dwelling-house, or a share in a family dwelling-house, in an area and that that house has not, during the twelve months preceding the prescribed date, been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the area.

PART XI.

Orissa.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to IV of the Eleventh Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

(3) In the case of general constituencies, of the total number of seats to be filled in each constituency the number of the seats, if any, specified in the fourth column of the table shall be reserved for members of the scheduled castes.

(4) At a poll in the Berhampur General Constituency or the Sambalpur Sadr General Constituency no person shall have more than one vote.

Women's Seats.

2. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat or some other seat in a territorial constituency.

The Indian Christian Seat.

3. A person shall not be qualified to be chosen to fill the Indian Christian seat unless he is an Indian Christian entitled to vote in the choice of a member to fill that seat or some other seat in a territorial constituency.

Minor Amendment of Sixth Schedule.

4. In Part XI of the Sixth Schedule to the Act, references to the Vizagapatam district, the sub-division of Angul and Khondmals sub-division shall be construed as references to the Koraput district, the Angul district and the Khondmals district respectively.

Representation of backward tribes.

5. (1) Of the seats to be filled in the Sambalpur Sadr general constituency one shall be reserved for a representative of backward tribes.

(2) A person shall not be qualified to be chosen to fill the said seat unless he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some general seat.

(3) A person shall be deemed to be a member of a backward tribe if and only if he satisfies the conditions specified in Part VI of the Thirteenth Schedule to this Order.

6. The four other seats to be filled by representatives of backward areas or backward tribes shall be filled by persons nominated by the Governor in his discretion.

Special qualifications for Scheduled Castes.

7. (1) In sub-paragraph (a) of paragraph six of Part XI of the Sixth Schedule to the Act (which confers a qualification to vote on persons assessed to chaukidari tax of not less than nine annas) after the words "of not less than nine annas" there shall be inserted the words "or, in the case of a member of the scheduled castes, of not less than six annas".

(2) In paragraph eight of the said Part of the said Schedule (which relates to the qualifications for constituencies in the Ganjam, Koraput and Khondmals districts) after sub-paragraph (a) there shall be inserted the following sub-paragraph:—

"(b) if he is a member of the scheduled castes and is a village servant, whether hereditary or not; or"

and sub-paragraph (b) shall be re-lettered "(c)"

The Commerce and Industry Seat.

8. The seat to be filled by a representative of commerce and industry shall be filled by an election in the constituency specified in the first column of the table in Part V of the Eleventh Schedule to this Order.

9. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency if he is himself qualified as hereafter provided in this paragraph or is the nominee in that behalf of a firm, Hindu joint family or corporation which is so qualified.

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(2) For the purposes of this paragraph an individual, firm, Hindu joint family or corporation shall be deemed to be so qualified as aforesaid if, and only if he or it—

- (a) is engaged in commerce or industry and has a place of business in the Province; and
 - (b) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed to income-tax on an income of not less than five thousand rupees derived from commerce or industry; and
 - (c) in the case of a corporation, has a paid up capital of not less than fifty thousand rupees.
- (3) For the purposes of this paragraph—

- (a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm, and
- (b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

10. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

11. A person shall not be qualified to be chosen to fill the commerce and industry seat unless he is included in the electoral roll for the constituency.

Landholders' Seats.

12. (1) The seats to be filled by representatives of landholders shall be filled by elections in the constituencies specified in the table in Part VI of the Eleventh Schedule to this Order.

(2) The extent of each such constituency shall be as specified in the second column of that table.

(3) One seat shall be filled in each of those constituencies.

13. A person shall not be qualified to be included in the electoral roll for a landholder's constituency unless he is resident in the constituency.

14. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a landholder's constituency if he—

- (a) holds as proprietor land in the Province for which he is liable to pay land revenue amounting to not less than three thousand rupees per annum; or
 - (b) holds as proprietor, tenure-holder or sub-proprietor land in the Province for which he is liable to pay local, land or village cess amounting to not less than five hundred rupees per annum; or
 - (c) is the proprietor of an estate in the Province which is by custom impartible and descends in accordance with the law of primogeniture.
- (2) For the purposes of this paragraph—
- (a) only such estates and shares of estates shall be taken into account as are held by a person as proprietor in his own right and, so far as they are registerable in registers kept under the law relating to the registration of land in force in the area in which they are situated, are registered therein in his own name; and
 - (b) if any question arises as to the amount paid by a person in respect of any such share of an estate, the District Officer of the district in which the estate is situate shall estimate the amount paid in respect of that share and his decision shall be final.

15. (1) A person shall not be qualified to be included in the electoral roll for more than one landholder's constituency, and any person who would, but for the provisions of this paragraph, be qualified to be included in more than one such roll shall be entitled to elect in which of the rolls he shall be included.

(2) If at a general election a person votes in more than one landholder's constituency, his votes in all those constituencies shall be void.

The Labour Seat.

16. (1) The seat to be filled by a representative of labour shall be filled by an election in the constituency specified in the first column of the table in Part VII of the Eleventh Schedule to this Order.

(2) A person shall not be qualified to be included in the electoral roll for the said constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(3) A person shall not be qualified to be included in the electoral roll for the said constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature or rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(4) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency if he—

- (a) is, and has for at least twelve months been, a member, honorary member or official of a recognized trade union operating in the Province; or

(b) has on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date worked for remuneration at a rate not greater than three hundred rupees per month, at one or more factories or mines in the Province:

Provided that a person who in the said year has not worked as aforesaid at one factory or one mine on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

(5) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill that seat.

17. (1) A trade union shall be deemed to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(2) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(3) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

General.

18. For the purposes of this Part of this Order, a person shall be deemed to be resident within an area if he ordinarily lives therein, or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

PART XII.

Sind.

The Territorial Constituencies.

1. (1) The territorial constituencies for the Province shall be those specified in the first column of the tables in Parts I to IV of the Twelfth Schedule to this Order, the extent thereof shall be as specified in the second column of those tables and the number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) The women's constituencies specified in Part III of the said Schedule are constituencies specially formed under sub-paragraph (b) of paragraph eight of the Fifth Schedule to the Act.

ORDERS IN COUNCIL.

Women's Seats.

2. Notwithstanding anything in paragraph one of Part XII of the Sixth Schedule to the Act, a person shall not be qualified to be included in the electoral roll for a constituency specially formed for the election of persons to fill the seats reserved for women unless he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency.

3. No man shall be included in the electoral roll for, or be entitled to vote at any election in, the Muhammadan constituency specially formed for the election of persons to fill the seat reserved for Muhammadan women.

4. A woman shall not be qualified to be chosen to fill a seat reserved for women unless she is entitled to vote in the choice of a member to fill that seat, or some other seat of the same communal description.

European Seats.

5. A person shall not be qualified to be chosen to fill a European seat unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat.

Minor Amendment of Part XII of Sixth Schedule.

6. In sub-paragraph (b) of paragraph three of Part XII of the Sixth Schedule to the Act, after the words "cultivates as a Hari" there shall be inserted the words "or occupies as a tenant".

Commerce and Industry Seats.

7. (1) The seats to be filled by representatives of commerce and industry shall be filled by elections in the constituencies specified in the first column of the table in Part V of the Twelfth Schedule to this Order.

(2) One seat shall be filled in each of these constituencies.

(3) The electoral rolls for the said constituencies shall be based, in the manner hereafter provided, on membership of the following bodies (hereafter referred to as "constituent bodies") that is to say, in the case of the Karachi Chamber of Commerce constituency, the Karachi Chamber of Commerce, and in the case of the Indian Commerce constituency, the Karachi Indian Merchants Association and the Karachi Buyers and Shippers Chamber.

8. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for a Commerce and Industry constituency if he is himself a qualified member of a constituent body, or is the nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member thereof.

(2) For the purposes of this paragraph, a member of a constituent body shall be deemed to be a qualified member thereof if, and only if, he or it—

- (a) is a subscribing member shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year; and
- (b) is engaged in commerce or industry and has a place of business in the Province; and
- (c) in the case of an individual, a firm or a Hindu joint family, was in any one of the five financial years immediately preceding that in which the prescribed date falls, assessed

to income-tax on an income of not less than ten thousand rupees derived from commerce or industry; and

(d) in the case of a corporation, has a paid up capital of not less than one lakh of rupees.

(3) For the purposes of this paragraph—

(a) if in any financial year the partners in a firm have been separately assessed to income-tax on their shares of the income of the firm derived from commerce or industry, the firm shall be deemed to have been assessed to income-tax on that income to an amount equal to the aggregate of the assessments so made on the partners in the firm for the time being in respect of that income of the firm; and

(b) a firm shall be deemed to retain its identity notwithstanding any change in the partners therein.

9. (1) A firm, corporation or Hindu joint family shall be entitled to nominate not more than three persons for the purposes of the last preceding paragraph, and the names of the persons so nominated shall be inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of those persons shall be entitled to vote at any election.

(2) No person shall be nominated as aforesaid by a firm or Hindu joint family, unless he is a member thereof or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

(3) No person shall be nominated as aforesaid by a corporation unless he is a director, managing agent or manager thereof, or the secretary thereof, or a person who is and has for at least six months been authorised to sign documents in its name in the ordinary course of its business.

10. (1) No person shall be, or be entitled to nominate persons to be, included in the electoral roll of more than one commerce and industry constituency.

(2) If at a general election a person votes in more than one commerce and industry constituency, his votes in all those constituencies shall be void.

11. A person shall not be qualified to be chosen to fill a commerce and industry seat unless he is included in the electoral roll for the constituency.

Landholders' Seats.

12. The two seats to be filled by representatives of landholders shall be filled by elections in the constituency specified in the table in Part VI of the Twelfth Schedule to this Order.

13. A person shall not be qualified to be included in the electoral roll for the landholder's constituency unless he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province.

14. (1) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the landholders' constituency if he—

(a) is a Jagirdar of the first or second class in the Province; or

(b) has in each of the three revenue years preceding that in which the prescribed date falls paid land revenue amount—

ing to not less than one thousand rupees in respect of land in the Province.

(2) Where a person has inherited any land, he shall be deemed for the purposes of this paragraph to have paid any land revenue paid in respect of that land by the person from whom he inherited it.

The Labour Seat.

15. (1) The seat to be filled by a representative of labour shall be filled by an election in the constituency specified in the first column of the table in Part VII of the Twelfth Schedule to this Order.

(2) A person shall not be qualified to be included in the electoral roll for the said constituency unless he has lived in the Province for a period of not less than six months in the year ending on the prescribed date.

(3) A person shall not be qualified to be included in the electoral roll for the said constituency if he is employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and Acts of the Provincial Legislature and rules may contain provisions for defining the persons who are to be treated as falling within the provisions of this paragraph.

(4) Subject to the provisions of this Order, a person shall be qualified to be included in the electoral roll for the said constituency if he either—

- (a) is, and has for at least twelve months been, a member, honorary member or official of a recognized trade union which admits to its membership persons employed at factories in the towns specified in the second column of the said table; or
- (b) has on not less than one hundred and eighty days (whether successive or not) in the year ending on the prescribed date worked for remuneration at a rate not greater than three hundred rupees per month at one or more factories in the said towns:

Provided that a person who in the said year has not worked as aforesaid at one factory on sufficient days to qualify him for inclusion in the electoral roll shall not by reason of his employment be included in the roll unless any prescribed requirements are complied with as to the making of an application for his enrolment and as to the production of evidence of his qualification.

(5) A person shall not be qualified to be chosen to fill the said seat unless he is entitled to vote in the choice of a member to fill that seat.

16. (1) A trade union shall be deemed for the purposes of this Order to be a recognised trade union if and only if it is certified by the Governor, exercising his individual judgment—

- (a) to be a *bona fide* trade union existing wholly or mainly for industrial or provident purposes; and
- (b) to have been in existence for at least two years and to have been registered as a trade union for at least one year; and
- (c) to have had throughout the financial year preceding that in which the certificate is given at least two hundred and fifty ordinary members who have paid subscriptions for the whole of that year; and
- (d) to have complied with any requirements imposed by or under the Indian Trade Unions Act, 1926, with respect to the

inspection of its books by the registrar of trade unions and with respect to the audit of its accounts.

(2) The Governor, exercising his individual judgment, shall from time to time reconsider the circumstances of the registered trade unions operating in the Province and shall revoke certificates previously issued and grant new certificates, as the circumstances may appear to him to require.

(3) The Governor, exercising his individual judgment, may from time to time appoint a tribunal to perform the functions conferred on him by the foregoing provisions of this paragraph and while any such appointment is in force the said provisions shall have effect as if references therein to the Governor were references to that tribunal.

General.

17. For the purposes of this Part of this Order, a person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

M. P. A. Hankey.

THE SCHEDULES.

FIRST SCHEDULE.

Minor Amendments of the Fifth and Sixth Schedules to the Act.

1. In paragraph twelve of the Fifth Schedule to the Act (which relates to the qualifications to be possessed by members of a Provincial Legislative Assembly) for the words "shall not be qualified to hold a seat" there shall be substituted the words "shall not be qualified to be chosen to fill a seat".

2. In paragraph six of part I of the Sixth Schedule to the Act (which relates to the preparation of electoral rolls) the words "or vote at any election to fill a general seat therein" shall be repealed.

3. At the end of paragraph seven of Part I of the Sixth Schedule to the Act, there shall be added the following provision:—

"If a person votes in more than one constituency in contravention of this paragraph, his votes in each of the constituencies shall be void."

4. For the purposes of any provision of the Sixth Schedule to the Act which requires that in certain cases a person shall not be included in an electoral roll unless an application is made by or on behalf of that person for that purpose, an application made before the date of this Order with a view to facilitating the provisional preparation of electoral rolls may be treated as a sufficient application.

SECOND SCHEDULE.

MADRAS CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.
Madras City North	(i) <i>Urban.</i> Divisions 1 to 4, 9, 10 and 12 of the City of Madras as defined in Notfn. No. 866 dated 24th September 1919 and published on page	1	—

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.
(i) <i>Urban</i> —contd.			
Madras City North-Central.	462 of Part I-A of Fort St. George Gazette, dated the 30th September 1919. Divisions 5 to 8, 11 and 13 to 16 as defined in the said Notification, but including Fort St. George.	1	—
Madras City South-Central	Divisions 17 to 23 as defined in the said Notification.	2	1
Madras City South ..	Divisions 24 to 30 as defined in the said Notification.	1	—
Vizagapatam Town ..	The municipality of Vizagapatam ..	1	—
Cocanada Town ..	The municipality of Cocanada ..	1	—
Bezwada cum Masulipatam Towns.	The municipalities of Bezwada and Masulipatam ..	1	—
Guntur cum Tenali Towns.	The municipalities of Guntur and Tenali ..	1	—
Tanjore cum Kumbakonam Towns.	The municipalities of Tanjore and Kumbakonam.	1	—
Trichinopoly cum Srirangam Towns.	The municipalities of Trichinopoly and Srirangam.	1	—
Madura Town ..	The municipality of Madura ..	1	—
Tinnevely cum Palamcottah Towns.	The municipalities of Tinnevely and Palamcottah.	1	—
Coimbatore Town ..	The municipality of Coimbatore ..	1	—
Salem Town ..	The municipality of Salem ..	1	—
(ii) <i>Rural</i> .			
Tekkali ..	Ichapur and Tekkali taluks ..	1	—
Chicacole ..	Chicacole, Narasannapeta and Patapatnam taluks.	2	1
Bobbili ..	Salur, Bobbili and Parvatipur taluks ..	1	—
Palakonda ..	Palakonda taluk ..	1	—
Vizianagram ..	Vizianagram division ..	2	—
Sarvasidhi ..	Sarvasidhi, Golconda and Gudam taluks ..	1	—
Viravalli ..	Viravalli taluk ..	1	—
Vizagapatam ..	Vizagapatam division excluding the municipality of Vizagapatam.	1	—
Rajahmundry ..	Rajahmundry and Bhadrachalam divisions ..	2	—
Amalapuram ..	Amalapuram division ..	2	1
Cocanada ..	Cocanada and Peddapuram divisions, excluding the municipality of Cocanada.	2	1
Ellore ..	Ellore and Kovvur divisions ..	2	1
Bhimavaram ..	Bhimavaram division ..	1	—
Narasapur ..	Narasapur division ..	1	—
Bandar ..	Bandar and Gudivada divisions excluding the municipality of Masulipatam.	2	1
Bezwada ..	Nuzvid and Bezwada divisions excluding the municipality of Bezwada.	2	—
Guntur ..	Guntur division excluding the municipality of Guntur.	1	—
Narasaraopet ..	Narasaraopet division ..	1	—
Tenali ..	Tenali division excluding the municipality of Tenali ..	1	—
Ongole ..	Ongole division ..	2	1
Gudur ..	Gudur division ..	2	1
Nellore ..	Nellore division ..	1	—
Kavali ..	Kavali division ..	1	—
Kandukur ..	Kandukur division ..	1	—
Rajampet ..	Rajampet division ..	1	—

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.
(ii) <i>Rural</i> —cont.			
Cuddapah	Jammalamadugu and Cuddapah divisions	2	1
Penukonda	Penukonda division	2	1
Gooty	Gooty division	1	—
Anantapur	Anantapur division	1	—
Bellary	Bellary and Adoni divisions	2	1
Hospet	Hospet division	1	—
Kurnool	Kurnool and Dhone divisions	2	1
Nandyal	Nandyal and Markapur divisions	1	—
Chandragiri	Chandragiri and Kalahasti taluks	1	—
Tiruttani	Tiruttani and Puttur taluks	2	1
Madanapalle	Madanapalle division	1	—
Chittoor	Chittoor division	1	—
Conjeevaram	Conjeevaram taluk	1	—
Chingleput	Chingleput and Madurantakam taluks	2	1
Saidapet	Saidapet division	1	—
Tiruvallur	Tiruvallur division	2	1
Tirupattur (North Arcot)	Tirupattur taluk	1	—
Gudiyattam	Gudiyattam taluk	1	—
Vellore	Vellore division	1	—
Ranipet	Ranipet division	2	1
Cheygar	Cheygar division	1	—
Tiruvannamalai	Tiruvannamalai division	2	1
Tindivanam	Tindivanam and Gingee taluks	2	1
Villupuram	Villupuram taluk	1	—
Chidambaram	Chidambaram division	2	1
Cuddalore	Cuddalore division	1	—
Tirukkoyilur	Tirukkoyilur division	2	1
Tanjore	Tanjore and Pattukkottai division excluding the municipality of Tanjore.	2	1
Kumbakonam	Kumbakonam division excluding the municipality of Kumbakonam.	1	—
Mayavaram	Mayavaram division	1	—
Mannargudi	Mannargudi division	2	1
Negapatam	Negapatam division	1	—
Trichinopoly	Trichinopoly and Karur divisions excluding the municipalities of Trichinopoly and Srirangam	2	—
Musiri	Musiri division	1	—
Ariyalur	Ariyalur division	2	1
Dindigul	Dindigul taluk	1	—
Palni	Kodaikanal, Palni and Nilakkottai taluks	2	1
Periakulam	Periakulam taluk	1	—
Tirumangalam	Tirumangalam taluk	1	—
Melur	Melur division excluding the municipality of Madura.	1	—
Srivilliputtur	Srivilliputtur taluk	1	—
Sattur	Sattur and Aruppukkottai taluks	2	1
Ramnad	Ramnad division	1	—
Tirupattur (Ramnad)	Tirupattur taluk	1	—
Sivaganga	Sivaganga and Tiruvadanai taluks	1	—
Tuticorin	Tuticorin division	1	—
Koilpatti	Koilpatti division	2	1
Shermadevi	Shermadevi division	1	—
Tinnevelly	Tinnevelly division excluding the municipalities of Tinnevelly and Palamcottah.	1	—
Pollachi	Pollachi and Udamalpet taluks	2	1
Palladam	Palladam taluk	1	—
Erode	Erode taluk	1	—

Name of Constituency.	Extent of Constituency.	No of Seats.	Scheduled Caste Seats.
(ii) <i>Rural</i> —cont.			
Dharapuram ..	Dharapuram taluk ..	1	—
Gobichettipalayam ..	Gobichettipalayam and Kollegal divisions ..	2	—
Coimbatore ..	Coimbatore division excluding the municipality of Coimbatore. ..	1	—
The Nilgiris ..	Nilgiris district ..	1	—
Hosur ..	Hosur division ..	1	—
Dharmapuri ..	Dharmapuri division ..	1	—
Tiruchengode ..	Tiruchengode taluk ..	1	—
Omalur ..	Omalur taluk ..	1	—
Namakkal ..	Namakkal division ..	2	1
Salem ..	Salem division excluding the municipality of Salem. ..	1	—
Coondapur ..	Coondapur division ..	2	1
Puttur ..	Puttur division ..	1	—
Mangalore ..	Mangalore division ..	1	—
Chirakkal ..	Chirakkal taluk ..	1	—
Kottayam ..	Kottayam and Wynaad taluks ..	1	—
Malappuram ..	Malappuram division ..	2	1
Calicut ..	Calicut taluk ..	1	—
Kurumbranad ..	Kurumbranad taluk ..	1	—
Palghat ..	Palghat taluk ..	1	—
Ponnani ..	Ponnani taluk and Cochin division ..	1	—

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No of seats.
(i) <i>Urban</i> .		
Madras City ..	The City of Madras as defined in Section 3 (9) of the Madras City Municipal Act, 1919 but including Fort St. George. ..	1
Calicut <i>cum</i> Cannanore <i>cum</i> Tellicherry Towns	The municipalities of Calicut, Cannanore and Tellicherry. ..	1
(ii) <i>Rural</i> .		
Vizagapatam <i>cum</i> East Godavari.	The districts of Vizagapatam and East Godavari. ..	1
West Godavari <i>cum</i> Kistna.	The districts of West Godavari and Kistna ..	1
Guntur ..	Guntur district ..	1
Nellore ..	Nellore district ..	1
Cuddapah ..	Cuddapah district ..	1
Kurnool ..	Kurnool district ..	1
Bellary ..	Bellary district ..	1
Anantapur ..	Anantapur district ..	1
Chittoor ..	Chittoor district ..	1
Chingleput <i>cum</i> South Arcot.	The districts of Chingleput and South Arcot ..	1
North Arcot ..	North Arcot district ..	1
Tanjore ..	Tanjore district ..	1
Trichinopoly ..	Trichinopoly district ..	1
Madura ..	Madura district ..	1

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Name of Constituency.	Extent of Constituency.	No of seats.
(ii) <i>Rural</i> —Contd.		
Ramnad ..	Ramnad district ..	1
Tinnevely ..	Tinnevely district ..	1
Salem <i>cum</i> Coimbatore ..	The districts of Salem, Coimbatore and the Nilgiris. ..	1
Chirakkal ..	Chirakkal taluk excluding the Cannanore Municipality. ..	1
Kottayam ..	Kottayam and Wynad taluks excluding the Tellicherry Municipality. ..	1
Calicut ..	Calicut division excluding the Calicut Municipality. ..	1
Malappuram ..	Malappuram division ..	2
Palghat ..	Palghat and Cochin divisions ..	2
Puttur ..	Puttur division ..	1
Mangalore ..	Mangalore and Coondapur divisions ..	1

III.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No of seats.
(i) <i>General Urban</i> .		
Madras City ..	The City of Madras as defined in section 3 (9) of the Madras City Municipal Act, 1919 but including Fort St. George. ..	1
Ellore Town ..	Ellore Municipality ..	1
Tellicherry <i>cum</i> Calicut Towns. ..	The Municipalities of Tellicherry and Calicut ..	1
(ii) <i>General Rural</i> .		
Cuddalore ..	Cuddalore division including the Municipality. ..	1
Bellary ..	Bellary taluk including the Municipality ..	1
Dindigul ..	Dindigul taluk including the Municipality ..	1
(iii) <i>Muhammadan Urban</i> .		
Madras City ..	The City of Madras as defined in section 3 (9) of the Madras City Municipal Act, 1919 but including Fort St. George. ..	1
(iv) <i>Indian Christian Urban</i> .		
Tinnevely <i>cum</i> Palamcottah <i>cum</i> Tuticorin Towns. ..	The Municipalities of Tinnevely, Palamcottah and Tuticorin. ..	1

IV.—ANGLO-INDIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No of seats.
Anglo-Indian ..	The whole Province ..	2

V.—EUROPEAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No of seats.
European ..	The whole Province ..	3

VI.—INDIAN CHRISTIAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No of seats.
Northern Circars ..	The districts and agencies of Vizagapatam and East Godavari, and the districts of West Godavari, and Kistna.	1
Guntur <i>cum</i> Nellore ..	The districts of Guntur and Nellore ..	1
Central districts ..	The districts of Cuddapah, Kurnool, Bellary, Anantapur, Chittoor and North Arcot.	1
Madras <i>cum</i> Chingleput ..	The districts of Madras and Chingleput ..	1
South Arcot <i>cum</i> Trichinopoly <i>cum</i> Salem <i>cum</i> Coimbatore.	The districts of South Arcot, Trichinopoly, Salem and Coimbatore.	1
Tanjore <i>cum</i> Madura <i>cum</i> Ramnad.	The districts of Tanjore, Madura and Ramnad.	1
Tinnevely ..	The Tinnevely district ..	1
West Coast ..	The districts of the Nilgiris, Malabar and South Kanara.	1

VII.—BACKWARD AREAS AND TRIBES CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Backward Tribal ..	The taluks of Golconda, Gudem, Srungavarapukota and Yellavaram.	1

VIII.—COMMERCE, INDUSTRY AND PLANTING CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
European Commerce ..	The Madras Chamber of Commerce and the Madras Trades' Association.	3
Madras Planters ..	The United Planters' Association of Southern India and Associations affiliated to it.	1
The Southern India Chamber of Commerce.	The Southern Indian Chamber of Commerce ..	1
The Nattukottai Nagarithars Association ..	The Nattukottai Nagarithars' Association ..	1

IX.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Northern Landholders I.	The districts of Vizagapatam and East Godavari.	1
Northern Landholders II	The districts of West Godavari, Kistna and Guntur.	1

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Name of Constituency.	Extent of Constituency.	No. of seats.
Northern Central Landholders.	The districts of Nellore, Chingleput, Chittoor, Cuddapah, Madras and Anantapur.	1
Southern Central Landholders.	The districts of North Arcot, South Arcot, Coimbatore, Salem and Trichinopoly.	1
Southern Landholders..	The districts of Tanjore, Madura, Ramnad and Tinnevely.	1
West coast Landholders.	The districts of Malabar, the Nilgiris and South Kanara.	1

X—LABOR CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
	(i) <i>Trade Union.</i>	
Railway Trade Union ..	Registered railway trade unions operating in the Province.	1
Textile Workers Trade Union.	Registered trade unions of textile workers operating in the City of Madras.	1
	(ii) <i>Non-Union Labour.</i>	
Textile Workers ..	Textile mills in the districts of Coimbatore and Malabar.	1
Madras City Dock and Factory Labour (excluding textile and railway Labour).	Madras Harbour and perennial factories (other than textile mills and railway workshops) situated in the city of Madras and the Chingleput district.	1
Vizagapatam <i>cum</i> East Godavari Dock and Factory Labour.	Vizagapatam Harbour and perennial factories (other than railway workshops) situated in the districts of Vizagapatam and East Godavari.	1
West Godavari <i>cum</i> Kistna <i>cum</i> Guntur Factory Labour.	Perennial factories (other than railway workshops) situated in the districts of West Godavari, Kistna and Guntur.	1

XI.—UNIVERSITY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
University ..	Non-territorial ..	1

ORDERS IN COUNCIL.

THIRD SCHEDULE.

BOMBAY CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.	Maratha seats.
	(i) <i>Urban.</i>			
Bombay City North and Bombay Suburban District.	Municipal ward Mahim of the City of Bombay and the Bombay Suburban district excluding Ambernath petha.	3		1
Bombay City (Byculla and Parel).	Municipal wards Byculla and Parel of the City of Bombay.	3	1	—
Bombay City (Fort, Mandvi, Bhuleshwar and Girgaum).	Municipal wards Fort, Mandvi, Bhuleshwar and Girgaum of the City of Bombay.	3	—	—
Ahmedabad City ..	The municipal borough of Ahmedabad, the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge and Sabarmati.	2	—	—
Surat and Rander Cities.	The municipal borough of Surat and the municipal district of Rander.	1	—	—
Poona City ..	The Poona City and Poona Suburban municipal boroughs and the cantonments of Poona and Kirkee.	1	—	—
Sholapur City ..	The municipal borough of Sholapur ..	1	—	—
	(ii) <i>Rural.</i>			
Ahmedabad North ..	The North Daskroi taluka (excluding the municipal borough of Ahmedabad, the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge and Sabarmati), Prantij, South Daskroi and Virangam talukas and the Sanand and Modasa mahals of the Ahmedabad district.	2	—	—
Ahmedabad South ..	Dholka and Dhandhuka talukas and Gogha mahal of the Ahmedabad district.	1	—	—
Kaira District ..	The district of Kaira	4	1	—
Panch Mahals West ..	Godhra and Kalol talukas and Halol mahal of the Broach and Panch Mahals district.	2	—	—
Panch Mahals East ..	Jhalod mahal and Dohad taluka of the Broach and Panch Mahals district.	1	—	—
Broach Sub-division ..	Broach sub-division of the Broach and Panch Mahals district.	2	—	—
Surat District ..	The district of Surat (excluding the municipal borough of Surat and the municipal district of Rander.)	4	1	—
Thana North ..	Palghar, Dahanu and Bassein talukas and Wada, Makhada and Umbergaon mahals of the Thana district.	3	—	1
Thana South ..	Thana mahal and Kalyan, Bhiwandi, Murbad and Shahapur talukas of the Thana district and Ambernath petha of the Bombay Suburban district.	3	1	—

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.	Maratha seats.
	(ii) Rural—cont.			
Ahmednagar North ..	Kopergaon, Nevasa, Sheozaon, Rahuri, Sangamner and Akola talukas and Pathardi petha of the Ahmednagar district.	4	—	—
Ahmednagar South ..	Ahmednagar, Parner and Shrigonda talukas and Karjat and Jamkhed pethas of the Ahmednagar district.	3	1	—
East Khandesh East ..	Jalgaon, Bhusaval, Kaver, Yaval and Jamner talukas, and Fdlabad petha of the East Khandesh district.	4	1	—
East Khandesh West ..	Chopda, Erandol, Amalner, Parola, Chalisgaon and Pachora talukas and Bhadgaon petha of the East Khandesh district.	4	—	1
West Khandesh East ..	Dhulia, Sakri, Sirpur and Sindkheda talukas of the West Khandesh district.	3	—	1
West Khandesh West ..	Shahada, Nandurbar and Taloda talukas, Navapur petha and Akrani mahal of the West Khandesh district, and the villages belonging to the following Mehwasi chafis, namely (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) Walvi of Gaothali, (5) Wassawa of Chukhi, and (5) the Parvi of Navalpur.	2	—	—
Nasik West ..	Nasik, Dindori, Niphad, Sinnai and Igatpuri talukas and Peint petha of the Nasik district.	4	1	—
Nasik East ..	Kalvan, Nandagaon, Malegaon, Baglan and Yeola talukas and Chandor petha of the Nasik district.	3	—	—
Poona East ..	Bhimthadi, Indapur and Purandhar talukas and Sirur and Dhond pethas of the Poona district.	3	—	—
Poona West ..	Junnor, Khed, Maval and Haveli talukas and Poona City taluka (excluding the Poona City and Poona Suburban municipal boroughs and the cantonments of Poona and Kirkee) and Ambegaon and Mulshi pethas of the Poona district.	3	1	—
Satara North ..	Satara, Koregaon, Wai, Javli and Khatav talukas and Man and Mahabaleshwar pethas of the Satara district.	4	1	—
Satara South ..	Karad, Patan, Walva, Tasgaon and Khanapur talukas and Shirala petha of the Satara district.	4	—	—
Sholapur North-East ..	Sholapur taluka (excluding the municipal borough of Sholapur), Barsi, Madha and Karmala talukas of the Sholapur district.	3	1	—
Sholapur South-West ..	Pandharpur, Sangola and Malsiras talukas of the Sholapur district.	2	—	—

Name of Constituency	Extent of Constituency.	No. of seats.	Scheduled Caste seats.	Maratha seats.
	(ii) <i>Rural</i> --(contd.)			
Belgaum South ..	Belgaum, Khanapur, Sampgaon and Farasgad talukas and Chandgad petha of the Belgaum district.	3	—	—
Belgaum North ..	Athni, Chikodi, Gakak and Hukeri talukas of the Belgaum district.	4	1	—
Bijapur North ..	Indi, Sindgi, Bijapur, Bagewadi and Muddebihal talukas of the Bijapur district.	3	1	—
Bijapur South ..	Bagalkot, Badami and Hungund talukas and Bilgi petha of the Bijapur district.	2	—	—
Dharwar North ..	Dharwar, Kalghatgi, Gadag, Navalgund, Ron and Huhli talukas and Nargund and Mundargi pethas of the Dharwar district.	4	—	—
Dharwar South ..	Karajgi, Ranebennur, Hangal, Kod and Bankapur talukas of the Dharwar district.	2	—	—
Kanara District ..	The district of Kanara ..	3	—	—
Kolaba District ..	The district of Kolaba ..	4	1	1
Ratnagiri North ..	Chiplun, Dapoli, Khed and Sangameshwar talukas and Guhagar and Mandangad pethas of the Ratnagiri district.	4	1	1
Ratnagiri South ..	Ratnagiri, Rajapur, Devgad and Malvan talukas and Vengurla petha of the Ratnagiri district.	4	—	1

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
	(i) <i>Urban</i> .	
Bombay City North and Bombay Suburban district.	Municipal wards Byculla, Parel and Mahim of the City of Bombay and the Bombay Suburban district excluding the Ambernath petha.	2
Bombay City South ..	Municipal wards Fort, Mandvi, Bhuleshwar and Girgaum of the City of Bombay.	2
Ahmedabad City ..	The municipal borough of Ahmedabad, the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge and Sabarmati.	1
Surat and Rander Cities.	The municipal borough of Surat and the municipal district of Rander.	1
	(ii) <i>Rural</i> .	
Ahmedabad District ..	The district of Ahmedabad (excluding the municipal borough of Ahmedabad, the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge and Sabarmati).	1
Kaira District ..	The district of Kaira ..	1
Panch Mahals Sub-division.	Panch Mahals sub-division of the Broach and Panch Mahals district.	1
Broach Sub-division ..	Broach sub-division of the Broach and Panch Mahals district.	2
Surat District ..	The district of Surat (excluding the municipal borough of Surat and municipal district of Rander).	1

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Name of Constituency.	Extent of Constituency.	No. of Seats.
Thana District ..	The district of Thana and the Ambernath petha of the Bombay Suburban district.	1
Ahmednagar District ..	The district of Ahmednagar ..	1
East Khandesh District ..	The district of East Khandesh ..	2
West Khandesh District.	The district of West Khandesh, and the villages belonging to the following Mehwasai chiefs, namely, (1) the Parvi of Kathi; (2) the Parvi of Nal; (3) the Parvi of Sangpur; (4) Walvi of Gaohali, (5) Wassawa of Chikhli; and (6) the Parvi of Navalpur ..	1
Nasik District ..	The district of Nasik ..	1
Poona District ..	The district of Poona ..	1
Satara District ..	The district of Satara ..	1
Sholapur District ..	The district of Sholapur ..	1
Belgaum District ..	The district of Belgaum ..	1
Bijapur District ..	The district of Bijapur ..	2
Dharwar District ..	The district of Dharwar ..	2
Kanara District ..	The district of Kanara ..	1
Kolaba District ..	The district of Kolaba ..	1
Ratnagiri District ..	The district of Ratnagiri ..	1

III — WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
(i) <i>General Urban.</i>		
Bombay City (Girgaum).	Municipal Ward Girgaum of the City of Bombay.	1
Bombay City (Bhuleshwar).	Municipal Ward Bhuleshwar of the City of Bombay.	1
Ahmedabad City ..	The Municipal borough of Ahmedabad, the cantonment of Ahmedabad and the notified areas of Kankaria, Asarwa, Ellis Bridge and Sabarmati.	1
Poona City ..	The municipal borough of Poona City ..	1
(ii) <i>General Rural.</i>		
Dharwar District ..	Ranebennur taluka in the Dharwar district ..	1
(iii) <i>Muhammadan Urban.</i>		
Bombay City (Girgaum).	Municipal Ward Girgaum of the City of Bombay.	1

IV.—ANGLO-INDIAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Bombay City <i>cum</i> Bombay Suburban District.	The City of Bombay and the Bombay Suburban district excluding the Ambernath petha.	1
Presidency ..	The whole Province (excluding the City of Bombay and the South Salsette taluka of the Bombay Suburban district).	1

V.—EUROPEAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
Bombay City <i>cum</i> Bombay Suburban District.	The City of Bombay and the Bombay Suburban district excluding the Ambernath petha.	2
Presidency ..	The whole Province (excluding the City of Bombay and the South Salsette taluka of the Bombay Suburban district).	1

VI.—INDIAN CHRISTIAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
(i) <i>Urban.</i>		
Bombay City ..	The City of Bombay	1
(ii) <i>Rural.</i>		
Thana <i>cum</i> Bombay Suburban District.	The district of Thana and the Bombay Suburban district.	1
Poona <i>cum</i> Ahmednagar Districts.	The districts of Poona and Ahmednagar ..	1

VII.—COMMERCE AND INDUSTRY CONSTITUENCIES.

Name of Constituency.	No. of Seats.
Bombay Chamber of Commerce and Bombay Presidency Trades Association.	3
Indian Merchants' Chamber	1
Bombay Millowners' Association	1
East India Cotton Association	1
Ahmedabad Millowners' Association	1

VIII.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
Deccan Sardars and Inamdars.	The Central and Southern Divisions and the villages belonging to the following Mehwassi chiefs, namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) Walvi of Gaohali, (5) Wassawa of Chikkhli, and (6) the Parvi of Navalpur.	1
Gujarat Sardars and Inamdars.	The Northern Division	1

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IX.—LABOUR CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
(i) <i>Trade Union.</i>		
Bombay City and Suburban Textile Unions.	Registered textile unions operating in the City of Bombay, the district of Thana or the Bombay Suburban District.	1
Ahmedabad Textile Unions.	Registered textile unions operating in the municipal borough of Ahmedabad, the Cantonment of Ahmedabad or the notified areas of Kankaria, Asarwa, Ellis Bridge and Sabarmati.	2
Railway Unions ..	Registered railway unions operating in the Province.	2
Trade Unions of seamen and dock workers.	Registered trade unions of seamen and dock workers operating in the Province.	1
(ii) <i>Non-union Labour.</i>		
Sholapur City (Textile Labour).	The area comprised within the limits of the municipal borough of Sholapur or within 5 miles of the boundary thereof.	1

X.—UNIVERSITY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of Seats.
University ..	Non-territorial	1

FOURTH SCHEDULE.

BENGAL CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.
(i) <i>Urban.</i>			
Calcutta North ..	The Shampukur, Kumartuli, Belgachia, Satpukur and Cossipur wards of Calcutta	1	—
Calcutta East ..	The Bartola, Sukeas Street, Beliaghata and Maniktala wards of Calcutta.	1	—
Calcutta West ..	The Jorabagan, Bara Bazar, Bow Bazar and Waterloo Street wards of Calcutta.	1	—
Calcutta Central ..	The Jorasanko, Collootola and Muchipara wards of Calcutta.	1	—
Calcutta South Central	The Poddapukur, Fenwick Bazar, Taltala, Kalinga, Park Street, Bamum Bustee, Tangra, Entally, Beniapukur and Ballyganj wards of Calcutta.	1	—

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.
	(i) <i>Urban</i> —contd.		
Calcutta South ..	The Bhowanipur, Kalighat, Alipore, Ekbalpur, Watganj and Hastings and Tollyganj wards of Calcutta.	1	—
Hooghly cum Howrah Municipal.	The municipalities of the Hooghly and Howrah districts.	1	—
Burdwan Division North Municipal.	The municipalities of the Burdwan, Birbhum, Bankura and Midnapore districts and the town of Kharagpur in the Midnapore district.	1	—
24-Parganas Municipal	The municipalities and cantonment of the 24-Parganas district.	1	—
Presidency Division Municipal.	The municipalities of the Nadia, Murshidabad, Jessore and Khulna districts.	1	—
North Bengal Municipal.	The municipalities of the Mymensingh district and of the Rajshahi Division, excluding the municipalities and cantonments of the Sadar, Kurseong and Kalimpong sub-divisions of the Darjeeling district.	1	—
East Bengal Municipal..	The municipalities of the Dacca, Faridpur and Bakarganj districts and of the Chittagong Division.	1	—
	(ii) <i>Rural</i> .		
Burdwan Central ..	The Sadar sub-division of the Burdwan district excluding municipal areas.	2	1
Burdwan North-West ..	The Kalna, Katwa and Asansol sub-divisions of the Burdwan district excluding municipal areas.	2	1
Birbhum ..	The Birbhum district excluding municipal areas.	2	1
Bankura West ..	The Sadar sub-division of the Bankura district excluding municipal areas.	2	1
Bankura East ..	The Bihnapur sub-division of the Bankura district excluding municipal areas.	1	—
Midnapore Central ..	The Sadar sub-division of the Midnapore district excluding municipal areas and the town of Kharagpur	2	1
Jhargram cum Ghatal ..	The Jhargram and Ghatal sub-divisions of the Midnapore district excluding municipal areas	2	1
Midnapore East ..	The Tamuluk sub-division of the Midnapore district excluding municipal areas.	1	—
Midnapore South-West	The Egra, Ramnagar and Contai police-stations in the Contai sub-division of the Midnapore district.	1	—
Midnapore South-East..	The Khejri, Patashpur and Bhagwanpur police-stations in the Contai sub-division of the Midnapore district.	1	—
Hooghly North-East ..	The Sadar sub-division and the Serampore, Uttarpara, Bhadreswar, Singur and Chanditala police-stations in the Serampore sub-division of the Hooghly district excluding municipal areas.	2	1
Hooghly South-West ..	The Arambagh sub-division and the Haripal, Tarkeswar and Jangipara police-stations in the Serampore sub-division of the Hooghly district excluding municipal areas.	1	—
Howrah ..	The Howrah district excluding municipal areas	2	1
24-Parganas South-East	The Sadar and Basirhat sub-divisions of the 24-Parganas district excluding municipal areas.	2	1

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.
(ii) <i>Rural</i> —contd.			
24-Parganas North-West	The Barrackpore, Barasat and Diamond Harbour sub-divisions of the 24-Parganas district excluding municipal and cantonment areas	2	1
Nadia	.. The Nadia district excluding municipal areas	2	1
Murshidabad	.. The Murshidabad district excluding municipal areas.	2	1
Jessore	.. The Jessore district excluding municipal areas.	2	1
Khulna	.. The Khulna district excluding municipal areas.	3	2
Rajshahi	.. The Rajshahi district excluding municipal areas.	1	—
Malda	.. The Malda district excluding municipal areas	2	1
Dinajpur	.. The Dinajpur district excluding municipal areas	3	2
Jalpaiguri cum Siliguri..	The Jalpaiguri district excluding municipal areas and the Siliguri sub-division of the Darjeeling district.	3	2
Rangpur	.. The Rangpur district excluding municipal areas.	3	2
Bogra cum Pabna	.. The Bogra and Pabna districts excluding municipal areas.	2	1
Dacca East	.. The Sadar and Narayanganj sub-divisions of the Dacca district excluding municipal areas.	2	—
Dacca West	.. The Manikganj and Munshiganj sub-divisions of the Dacca district.	1	—
Mymensingh West	.. The Tangail and Jamalpur sub-divisions and the Kotwali, Muktagacha, Phulbari, Gaffarganj, Trisal and Bhaluka police-stations of the Sadar sub-division of the Mymensingh district excluding municipal areas.	2	1
Mymensingh East	.. The Netrakona and Kishoreganj sub-divisions and the Haluaghat, Phulpur, Nandail and Iswarganj police-stations of the Sadar sub-division of the Mymensingh district excluding municipal areas.	2	1
Faridpur	.. The Faridpur district excluding municipal areas.	3	2
Bakarganj South-West..	The Patuakhali and Pirojpur sub-divisions of the Bakarganj district excluding municipal areas.	2	1
Bakarganj North-East.	The Sadar and Bhola sub-divisions of the Bakarganj district excluding municipal areas.	1	—
Tippera	.. The Tippera district excluding municipal areas.	2	1
Noakhali	.. The Noakhali district excluding municipal areas.	1	—
Chittagong	.. The Chittagong district excluding municipal areas.	1	—
Darjeeling	.. The Sadar, Kurseong and Kalimpong sub-divisions of the Darjeeling district.	1	—

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
(i) <i>Urban</i> .		
Calcutta North	.. The Shampukur, Kumartuli, Bartola, Sukeas Street, Jorabagan, Jorasanko, Bara Bazar,	1

Name of Constituency.	Extent of Constituency.	No. of Seats.
	(i) <i>Urban</i> -contd.	
Calcutta South ..	Collootola, Muchipara, Bow Bazar, Paddapur, Waterloo Street, Beliaghata, Maniktala, Belgachia, Satpukur and Cossipur wards of Calcutta.	1
Hooghly cum Howrah Municipal.	The Fenwick Bazar, Taltala, Kalinga, Park Street, Bamun Bustee, Tangra, Entally, Beniapur, Ballyganj, Bhowanipur, Kalighat, Alipore, Ekbalpur, Watganj and Hastings, and Tollyganj wards of Calcutta.	1
Barrackpore Municipal.	The municipalities of the Hooghly and Howrah districts.	1
24-Parganas Municipal.	The municipalities and cantonment of the Barrackpore sub-division of the 24-Parganas district.	1
Dacca Municipal ..	The municipalities of the Sadar, Barasat and Basirhat sub-divisions of the 24-Parganas district.	1
	The municipalities of the Dacca district ..	1
	(ii) <i>Rural</i> .	
Burdwan ..	The Burdwan district ..	1
Birbhum ..	The Birbhum district ..	1
Bankura ..	The Bankura district ..	1
Midnapore ..	The Midnapore district ..	1
Hooghly ..	The Hooghly district, excluding municipal areas.	1
Howrah ..	The Howrah district, excluding municipal areas.	1
24-Parganas South ..	The Diamond Harbour sub-division and the Bishnupur, Baruipur and Jaynagar police-stations of the Sadar sub-division of the 24 Parganas district, excluding municipal areas.	1
24-Parganas Central ..	The Tollyganj, Sonarpur, Behala, Metiabruz, Maheshtola, Canning, Budge-Budge and Bhangar police-stations of the Sadar sub-division, the Barrackpore sub-division and the Barasat, Amdanga and Rajarhat police stations of the Barasat sub-division of the 24 Parganas district, excluding municipal and cantonment areas.	1
24-Parganas North-East.	The Basirhat sub-division and the Deganga and Habra police-stations of the Barasat sub division of the 24-Parganas district, excluding municipal areas.	1
Kushtia ..	The Kushtia sub division of the Nadia district ..	1
Meherpur ..	The Meherpur sub-division of the Nadia district ..	1
Nadia East ..	The Chuadanga sub-division and the Kanaghat and Hanskhali police-stations of the Kanaghat sub-division of the Nadia district.	1
Nadia West ..	The Sadar sub-division and the Santipur, Chakdah and Haringhata police-stations of the Kanaghat sub division of the Nadia district.	1
Berhampore ..	The Sadar sub-division of the Murshidabad district.	1
Murshidabad South-West.	The Lalbagh and Kandi sub-divisions of the Murshidabad district.	1
Jangipur ..	The Jangipur sub-division of the Murshidabad district.	1
Jessore Sadar ..	The Sadar sub-division of the Jessore district ..	1
Jessore East ..	The Magura and Narail sub-divisions of the Jessore district.	1
Bongaon ..	The Bongaon sub division of the Jessore district.	1
Jhenidah ..	The Jhenidah sub division of the Jessore district.	1
Khulna ..	The Sadar sub-division of the Khulna district ..	1
Satkhira ..	The Satkhira sub-division of the Khulna district ..	1

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Name of Constituency.	Extent of Constituency.	No. of Seats.
(ii) Rural—contd.		
Bagerhat	.. The Bagerhat sub-division of the Khulna district.	1
Nator	.. The Nator sub-division of the Rajshahi district.	1
Rajshahi North	.. The Ramnagar, Naogaon, Badalgachhi, Mahadehpur and Niamatpur police-stations of the Naogaon sub-division of the Rajshahi district.	1
Rajshahi South	.. The Tanor, Godagari, Boalia, Paba, Durgapur, Puthia and Charchat police-stations of the Sadar sub-division of the Rajshahi district.	1
Rajshahi Central	.. The Manda and Atrai police-stations of the Naogaon sub-division and the Bagmara and Mohanpur (Khurd) police-stations of the Sadar sub-division of the Rajshahi district.	1
Balurghat	.. The Balurghat sub-division of the Dinajpur district.	1
Thakurgaon	.. The Thakurgaon sub-division of the Dinajpur district.	1
Dinajpur Central East.	.. The Chirirbandar, Parbatipur, Nawabganj and Ghoraghat police-stations of the Sadar sub-division of the Dinajpur district.	1
Dinajpur Central West.	.. The Dinajpur, Birai, Kaliaganj, Kushmundi, Banshihari, Itahar, Raiganj and Hemtabad police-stations of the Sadar sub-division of the Dinajpur district.	1
Jalpaiguri cum Darjeeling.	.. The Jalpaiguri and Darjeeling districts	1
Nilphamari	.. The Nilphamari sub-division of the Rangpur district.	1
Rangpur North	.. The Kotwali, Gangachara, Badarganj, Kaliganj and Hatibandha police-stations of the Sadar sub-division of the Rangpur district.	1
Rangpur South	.. The Kaunia, Pirgacha, Mitapokhur and Pirganj police-stations of the Sadar sub-division of the Rangpur district.	1
Kurigaon North	.. The Blurangamari, Nageswari, Fulbari, Lalmonirhat and Kurigaon police-stations of the Kurigaon sub-division of the Rangpur district.	1
Kurigaon South	.. The Ulipur, Chilmari and Rahumari police-stations of the Kurigaon sub-division of the Rangpur district.	1
Gaibandha North	.. The Sundarganj, Sadullapur and Gaibandha police-stations of the Gaibandha sub-division of the Rangpur district.	1
Gaibandha South	.. The Palashbari, Gobindganj, Shaghata and Fulchuri police-stations of the Gaibandha sub-division of the Rangpur district.	1
Bogra East	.. The Shariakandi and Gabtali police-stations of the Bogra district.	1
Bogra South	.. The Bogra, Sherpur and Dhunot police-stations of the Bogra district.	1
Bogra North	.. The Sibganj, Khetlal and Panchbibi police-stations of the Bogra district.	1
Bogra West	.. The Kabalu, Dupchanchia, Joypurhat and Adamdighi police-stations of the Bogra district.	1
Pabna East	.. The Bera, Sujanagar, Santhia and Faridpur police-stations of the Sadar sub-division of the Pabna district.	1
Pabna West	.. The Chatmohar, Atgharia, Pabna and Sara police-stations of the Sadar sub-division of the Pabna district.	1

Name of Constituency.	Extent of Constituency.	No. of Seats.
(ii) <i>Rural</i> —contd.		
Serajganj South ..	The Shahzadpur, Chauhali and Belkuchi police-stations of the Serajganj sub-division of the Pabna district.	1
Serajganj North ..	The Serajganj and Kazipur police-stations of the Serajganj sub-division of the Pabna district.	1
Serajganj Central ..	The Kamarkhanda, Ullepara, Raiganj and Taras police-stations of the Serajganj sub-division of the Pabna district.	1
Malda North ..	The Kharba, Harishchandrapur, Ratua, Manik-chak, Gajole, Malda, Bamangola, Habibpur, English Bazar and Bholahat police-stations of the Malda district.	1
Malda South ..	The Kaliachak, Sibganj, Nawabganj, Nachole and Gomastapur police-stations of the Malda district.	1
Narayanganj South ..	The Fatulla, Narayanganj, Baidyabazar and Rups-ganj police-stations of the Narayanganj sub-division of the Dacca district excluding municipal areas.	1
Narayanganj East ..	The Arai-hazar, Narsingdi and Sibpur police-stations of the Narayanganj sub-division of the Dacca district.	1
Narayanganj North ..	The Monohardi and Raipura police stations of the Narayanganj sub-division of the Dacca district.	1
Munshiganj ..	The Munshiganj, Tangibari and Lohajang police-stations of the Munshiganj sub-division of the Dacca district.	1
Dacca South Central ..	The Serajdikhan and Srinagar police-stations of the Munshiganj sub-division and the Nawabganj and Dohar police stations of the Sadar sub-division of the Dacca district.	1
Manikganj East ..	The Manikganj, Ghior and Satura police stations of the Manikganj sub-division and the Dhamrai police-station of the Sadar sub-division of the Dacca district.	1
Manikganj West ..	The Singair, Daulatpur, Sibalaya and Harirampur police-stations of the Manikganj sub division of the Dacca district.	1
Dacca North Central ..	The Kaliakoir, Sripur, Kaliganj and Kapasia police stations of the Sadar sub-division of the Dacca district.	1
Dacca Central ..	The Sabhar, Tezgaon, Lalbagh, Keraniganj and Joydebpur police-stations of the Sadar sub-division of the Dacca district excluding municipal areas.	1
Jamalpur East ..	The Nalitabari, Nokla and Sherpur police-stations of the Jamalpur sub-division of the Mymensingh district.	1
Jamalpur North ..	The Sribardi, Dewanganj and Islampur police-stations of the Jamalpur sub-division of the Mymensingh district.	1
Jamalpur West ..	The Melandaha, Madarganj and Sarishabari police-stations of the Jamalpur sub-division of the Mymensingh district.	1
Jamalpur <i>cum</i> Mukta-gacha.	The Jamalpur police-station of the Jamalpur sub-division and the Muktapacha police-station of the Sadar sub-division of the Mymensingh district.	1
Mymensingh North ..	The Haluaghat, Phulpur and Kotwali police-stations of the Sadar sub-division of the Mymensingh district.	1

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Name of Constituency.	Extent of Constituency	No. of seats.
	(ii) Rural—contd.	
Mymensingh East ..	The Iswarganj and Nandail police-stations of the Sadar sub-division of the Mymensingh district.	1
Mymensingh South ..	The Gaffargaon and Bhaluka police-stations of the Sadar sub-division of the Mymensingh district.	1
Mymensingh West ..	The Phulbaria and Trisal police-stations of the Sadar sub-division of the Mymensingh district.	1
Tangail South ..	The Nagarpur, Mirzapur and Basail police-stations of the Tangail sub-division of the Mymensingh district.	1
Tangail West ..	The Tangail and Kalihati police-stations of the Tangail sub-division of the Mymensingh district.	1
Tangail North ..	The Ghatail, Madhupur and Gopalpur police-stations of the Tangail sub-division of the Mymensingh district.	1
Netrakona South ..	The Kendua, Madan, Khaliajuri, Mohanganj and Atpara police-stations of the Netrakona sub-division of the Mymensingh district.	1
Netrakona North ..	The Durgapur, Kalmakanda, Purbadhala, Barhaita and Netrakona police-stations of the Netrakona sub-division of the Mymensingh district.	1
Kishoreganj South ..	The Hossampur, Pakundia and Kathadi police-stations of the Kishoreganj sub-division of the Mymensingh district.	1
Kishoreganj North ..	The Kishoreganj, Karimganj, Tarail and Itna stations of the Kishoreganj sub-division of the Mymensingh district.	1
Kishoreganj East ..	The Astagram, Nikli, Bajitpur, Bhauab-bazar and Kuliarchar police-stations of the Kishoreganj sub-division of the Mymensingh district.	1
Gopalganj ..	The Gopalganj sub-division of the Faridpur district.	1
Goalundo ..	The Goalundo sub-division of the Faridpur district.	1
Faridpur West ..	The Faridpur, Charbhadrasan, Nagarkanda and Bhusna police stations of the Sadar sub-division of the Faridpur district.	1
Faridpur East ..	The Sadarpur and Bhanga police-stations of the Sadar sub-division and the Sibchar police-station of the Madaripur sub-division of the Faridpur district.	1
Madaripur West ..	The Rajair, Madaripur, Kalkini and Palong police-stations of the Madaripur sub-division of the Faridpur district.	1
Madaripur East ..	The Gosairhat, Bhedarganj, Naria and Janjira police-stations of the Madaripur sub-division of the Faridpur district.	1
Patuakhali North ..	The Bauphal, Patuakhali, Mirzaganj and Betagi police-stations of the Patuakhali sub-division of the Bakarganj district.	1
Patuakhali South ..	The Barguna, Amtoli, and Galachipa police-stations of the Patuakhali sub-division of the Bakarganj district.	1
Pirojpur South ..	The Patharghata, Mathbaria, Bamna, Bhandaria and Kathalia police-stations of the Pirojpur sub-division of the Bakarganj district.	1
Pirojpur North ..	The Pirojpur, Nazirpur, Swarupkati, Banaripara and Kowkhali police-stations of the Pirojpur sub-division of the Bakarganj district.	1
Bakarganj North ..	The Mehendiganj, Muladi and Hizla police-stations of the Sadar sub-division of the Bakarganj district.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
	(ii) <i>Rural</i> —contd.	
Bakarganj South ..	The Bakarganj, Rajapur, Nalchiti and Jhalakoti police-stations of the Sadar sub-division of the Bakarganj district.	1
Bakarganj West ..	The Barisal, Babuganj, Uzirpur and Gaurnadi police-stations of the Sadar sub-division of the Bakarganj district.	1
Bhola North ..	The Bhola and Daulatkhani police-stations of the Dakshin Shabazpur sub-division of the Bakarganj district.	1
Bhola South ..	The Baranadi, Tazumaddin and Lalmohan police-stations of the Dakshin Shabazpur sub-division of the Bakarganj district.	1
Brahmanbaria North ..	The Nasirnagar, Sarail and Brahmanbaria police-stations of the Brahmanbaria sub-division of the Tippera district.	1
Brahmanbaria South ..	The Bancharampur and Nabinagar police-stations of the Brahmanbaria sub-division of the Tippera district.	1
Tippera North-East ..	The Kasba police-station of the Brahmanbaria sub-division and the Burichang police-station of the Sadar sub-division of the Tippera district.	1
Tippera North ..	The Debiduar and Muradnagar police-stations of the Sadar sub-division of the Tippera district.	1
Tippera West ..	The Homna and Daudkandi police-stations of the Sadar sub-division of the Tippera district.	1
Tippera Central ..	The Chandina and Comilla police-stations of the Sadar sub-divisions of the Tippera district.	1
Tippera South ..	The Laksam and Chaudagram police-stations of the Sadar sub-division of the Tippera district.	1
Chandpur East ..	The Hajiganj and Kachua police-stations of the Chandpur sub-division of the Tippera district.	1
Chandpur West ..	The Chandpur and Faridganj police-stations of the Chandpur sub-division of the Tippera district.	1
Matlabbazar ..	The Matlabbazar police-station of the Chandpur sub-division of the Tippera district.	1
Noakhali North ..	The Begamganj and Senbagh police-stations of the Sadar sub-division of the Noakhali district.	1
Noakhali Central ..	The Sudharam and Companyganj police-stations of the Sadar sub-division and the Sonagazi police-station of the Feni sub-division of the Noakhali district.	1
Ramganj cum Raipur ..	The Ramganj and Rajpur police stations of the Sadar sub-division of the Noakhali district.	1
Noakhali West ..	The Lakshmipur and Ramgati police-stations of the Sadar sub-division of the Noakhali district.	1
Noakhali South ..	The Hatiya and Sandwip police-stations of the Sadar sub-division of the Noakhali district.	1
Feni ..	The Feni, Pashuram and Chhagalnaya police-stations of the Feni sub-division of the Noakhali district.	1
Cox's Bazar ..	The Cox's Bazar sub-division of the Chittagong district.	1
Chittagong South ..	The Satkania, Banshali and Anwara police-stations of the Sadar sub-divisions of the Chittagong district.	1
Chittagong South Central.	The Patiya, Boalkhali, and Rangania police-stations of the Sadar sub-division of the Chittagong district.	1

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Name of Constituency.	Extent of Constituency.	No. of seats.
(ii) <i>Rural</i> —contd		
Chittagong North-East.	The Raojan, Hathazari and Faticcha police-stations of the Sadar sub-division of the Chittagong district.	1
Chittagong North-West	The Sitakund, Mirsarai, Chittagong, Double Moorings and Pachalas police-stations of the Sadar sub-division of the Chittagong district.	1

III.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>General Urban</i> .		
Calcutta (General) ..	Part I.—The area bounded on the North by Grey Street, on the South by Bow Bazar Street, on the East by Upper Circular Road and on the West by Chittaranjan Avenue with extension up to Grey Street. Part II.—The area bounded on the North by Park Street, on the South and East by Lower Circular Road and on the West by Chowringhee Road. Part III.—The Ballyganj, Bhowanipur, Alipore and Tollyganj wards of Calcutta.	1
Dacca (General) ..	The municipalities in the Dacca district	1
(ii) <i>Muhammadan Urban</i> .		
Calcutta (Muhammadan).	Calcutta as defined in section 3 (11) of the Calcutta Municipal Act, 1923	1
Dacca (Muhammadan).	The Municipalities in the Dacca district	1

IV.—ANGLO-INDIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Anglo-Indian ..	The Presidency of Bengal excluding the Chittagong Hill Tracts.	4 (including one woman's seat).

V.—EUROPEAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Burdwan Division ..	The Burdwan Division, excluding the Hooghly and Howrah districts.	1
Hooghly cum Howrah.	The Hooghly and Howrah districts	1

Name of Constituency.	Extent of Constituency.	No. of seats.
Calcutta and Suburbs ..	Calcutta as defined in section 3 (11) of the Calcutta Municipal Act, 1923, and the Tollyganj, South Suburban and Garden Reach Municipalities of the 24-Parganas district.	4
Presidency Division ..	The Presidency Division, excluding Calcutta and the Tollyganj, South Suburban and Garden Reach Municipalities of the 24-Parganas district.	1
Rajshahi Division ..	The Rajshahi Division excluding the Darjeeling district.	1
Darjeeling ..	The Darjeeling district	1
Dacca Division ..	The Dacca Division	1
Chittagong Division ..	The Chittagong Division, excluding the Chittagong Hill Tracts.	1

VI.—INDIAN CHRISTIAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Calcutta <i>cum</i> Presidency Division.	The Presidency Division including Calcutta ..	1
Dacca Division ..	The Dacca Division	1

VII.—COMMERCE AND INDUSTRY CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Bengal Chamber of Commerce.	Non-territorial	7
Calcutta Trades Association.	Do.	2
Indian Jute Mills Association.	Do.	2
Indian Tea Association ..	Do.	2
Indian Mining Association	Do.	1
Bengal Nation Chamber of Commerce.	Do.	2
Indian Chamber of Commerce.	Do.	1
Marwari Association ..	Do.	1
Muslim Chamber of Commerce.	Do.	1

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VIII.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Burdwan Landholders ..	The Burdwan Division	1
Presidency Landholders.	The Presidency Division	1
Rajshahi Landholders ..	The Rajshahi Division	1
Dacca Landholders ..	The Dacca Division	1
Chittagong Landholders.	The Chittagong Division, excluding the Chittagong Hill Tracts.	1

IX.—LABOUR CONSTITUENCIES

Name of Constituency.	Extent of Constituency.	No. of seats.
Railway Trade Union ..	(i) <i>Trade Union Labour.</i> Registered trade unions of railway workers operating in the Province.	1
Water Transport Trade Union.	Registered trade unions of water transport workers operating in the Province.	1
Calcutta and Suburbs (Registered factories).	(ii) <i>Factory and Colliery Labour.</i> Calcutta and the Sadar sub-division of the 24-Parganas district.	1
Barrackpore (Registered factories).	The Barrackpore sub-division of the 24-Parganas district	1
Howrah (Registered factories).	The Howrah district	1
Hooghly cum Serampore (Registered factories).	The Sadas and Serampore sub-divisions of the Hooghly district.	1
Colliery (Coal Mines) ..	The Asansol sub-division of the Burdwan district.	1
(iii) <i>Tea Garden Labour.</i>		
<i>First election.</i>		
Bengal Dooars (Western)	The following tea gardens:— Good Hope <i>alias</i> Sisubari. Dam Dim. Ranicherra. Kumlai. Rangamati. Gujanjhora. Hahaipotha. New Glencoe. Sylee. Nedam.	
<i>Second election.</i>		
Darjeeling Sadar ..	The following tea gardens:— Arya. Steinthal. Happy Valley. Windsor. Phoobsering. Singtom. Soom. Patabong. Rungreet. Pandam. Bannockburn. Bloomfield.	

Name of Constituency.	Extent of Constituency.	No. of seats.
(iii) <i>Tea Garden Labour—contd.</i> <i>Third election.</i>		
Bengal Dooars (Eastern)	The following tea gardens:— Atiabari. Bhatkawa. Rajabhat. Dima. Kalchini. Chuapara. Mechpara. Bhatpara. Radharani. Madhu. Satali.	1
<i>Fourth election.</i>		
Kurseong	.. The following tea gardens:— Maharani .. Edenvale .. Singell .. Monteviot .. Makaibari .. Ambootia .. Springside .. Castleton .. Giddapahar .. Murbong .. Sepaydhura ..	1

X.—UNIVERSITY CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
Calcutta University	Non-territorial	1
Dacca University	Do.	1

FIFTH SCHEDULE.

THE UNITED PROVINCES CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.
(i) <i>Urban.</i>			
Lucknow city	.. The municipality and cantonment of Lucknow and the Charbagh and Alambagh notified area.	2	1
Cawnpore city	.. The municipality and cantonment of Cawnpore and the Juhi notified area.	2	1

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Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.
(i) <i>Urban</i> --contd.			
Agra city ..	The municipality and cantonment of Agra.	2	1
Benares city ..	The municipality and cantonment of Benares	1	1
Allahabad city ..	The municipality and cantonment of Allahabad.	2	1
Saharanpur-cum-Hardwar-cum-Dehra Dun-cum-Muzaffarnagar cities.	The municipalities of Saharanpur, Hardwar Union and Muzaffarnagar, and the municipality and cantonment of Dehra Dun.	1	1
Bulandshahr-cum-Meerut-cum-Hapur-cum-Khurja-cum-Nagina cities	The municipalities of Bulandshahr, Hapur, Khurja and Nagina, and the municipality and cantonment of Meerut.	1	—
Muttra-cum-Aligarh-cum-Hathras cities.	The municipalities of Hathras and Kotli-Aligarh, and the municipality and cantonment of Muttra	1	—
Farrukhabad-cum-Etawah-cum-Jhansi cities.	The municipality of Etawah, the municipality and cantonment of Farrukhabad-cum-Fategarh, and the municipality and cantonment of Jhansi and the notified area of Garhwa Phatak.	1	—
Moradabad-cum-Amroha-cum-Sambhal-cum-Chandansi cities.	The municipalities of Moradabad, Amroha, Sambhal and Chandausi.	1	—
Bareilly-cum-Pilibhit-cum-Shahjahanpur-cum-Budaun cities.	The municipalities of Pilibhit and Budaun and the municipalities and cantonments of Bareilly and Shahjahanpur.	1	—
Fyzabad-cum-Bahraich-cum-Sitapur cities.	The municipality of Bahraich and the municipalities and cantonments of Sitapur and Fyzabad-cum-Ajodhya.	1	—
Janpur-cum-Mirzapur-cum-Ghazipur-cum-Gorakhpur cities.	The municipalities of Janpur, Ghazipur and Mirzapur-cum-Bindhyachal, and the municipality, notified area and railway colony of Gorakhpur.	10	—
(ii) <i>Rural</i>			
Dehra Dun district ..	Dehra Dun district, excluding the municipality and cantonment of Dehra Dun.	1	—
Saharanpur district (South East).	The tahsils of Roorkee and Deoband, excluding the municipality of Hardwar Union.	2	1
Saharanpur district (North-west.)	The tahsils of Saharanpur and Nakur, excluding the municipality of Saharanpur	1	—
Muzaffarnagar district (East).	The tahsils of Jansath and Muzaffarnagar, excluding the municipality of Muzaffarnagar.	1	—
Muzaffarnagar district (West).	The tahsils of Budhana and Kairana	1	—
Meerut district (South-West).	The tahsils of Baghpat and Ghaziabad	1	—
Meerut district (North).	The tahsils of Meerut and Sardhana, excluding the municipality and cantonment of Meerut.	1	—
Meerut district (East).	The tahsils of Mawana and Hapur, excluding the municipality of Hapur.	1	—
Bulandshahr district (North).	The tahsil of Bulandshahr, excluding the municipality of Bulandshahr.	1	—
Bulandshahr district (East).	The tahsil of Aunpsahr	1	—
Bulandshahr district (South-West).	The tahsils of Khurja and Sikandrabad, excluding the municipality of Khurja.	2	1
Aligarh district (West).	The tahsils of Khair and Iglas	1	—
Aligarh district (East).	The tahsils of Atrauli and Sikandara Rao	1	—
Aligarh district (Centre)	The tahsils of Hathras and Koil, excluding the municipalities of Hathras and Koil-Aligarh.	1	—

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Castes seats.
(ii) <i>Rural</i> —contd.			
Muttra district (West) ..	The tahsils of Muttra and Chhata excluding the municipality and cantonment of Muttra.	1	—
Muttra (East) and Etah (West) districts.	The tahsils of Mat and Sadabad in the Muttra district and the tahsil of Jalesar in the Etah district.	1	—
Agra district (North-East).	The tahsils of Agra, Itmadpur and Firozabad, excluding the municipality and cantonment of Agra	2	1
Agra district (South-West).	The tahsils of Bah, Fatehabad, Kheragarh and Kiraoli.	1	—
Mainpuri district (North-East).	The tahsils of Mainpuri and Bhongaon.	2	1
Mainpuri district (South-West).	The tahsils of Mustafabad (Jasrana), Shikohabad and Karhal.	1	—
Etah district (North) ..	The tahsil of Kasganj and the Patiali and Nidhpur parganas of the Aliganj tahsil.	1	—
Etah district (South) ..	The tahsil of Etah and the Barna and Azamnagar parganas of the Aliganj tahsil.	1	—
Bijnor district (West) ..	The tahsils of Najibabad and Bijnor ..	1	—
Bijnor district (East) ..	The tahsils of Nagina and Dhampur, excluding the municipality of Nagina	1	—
Moradabad district (East).	The tahsils of Moradabad, Bilari and Thakurdwara, excluding the municipalities of Moradabad and Chandauli.	1	—
Moradabad district (West).	The tahsils of Amroha, Sambhal and Hasanpur excluding the municipalities of Amroha and Sambhal.	1	—
Bareilly district (South-West).	The tahsils of Bareilly and Aonla, excluding the municipality and cantonment of Bareilly.	1	—
Bareilly district (North-East).	The tahsils of Nawabganj, Baheri and Faridpur.	1	—
Shahjahanpur district (East).	The tahsils of Shahjahanpur and Pawayan, excluding the municipality and cantonment of Shahjahanpur.	1	—
Shahjahanpur district (West).	The tahsils of Jalalabad and Tilaar ..	1	—
Budaun district (East) ..	The tahsils of Budaun and Dataganj., excluding the municipality of Budaun.	2	1
Budaun district (West) ..	The tahsils of Sahaswan, Gunnaur and Bisauli.	1	—
Pilibhit district (South) ..	The tahsil of Bisalpur ..	1	—
Pilibhit district (North).	The tahsils of Pilibhit and Puranpur, excluding the municipality of Pilibhit.	1	—
Farrukhabad district (North).	The tahsils of Farrukhabad and Kaimganj, excluding the municipality and cantonment of Farrukhabad-cum-Fategarh.	1	—
Farrukhabad district (South).	The tahsils of Chhibramau and Kanauj ..	1	—
Etawah district (West).	The tahsils of Etawah and Bharthana, excluding the municipality of Etawah.	1	—
Etawah district (East).	The tahsils of Auraiya and Bidhuna ..	1	—
Cawnpore district (South).	The tahsils of Ghatampur and Bhognipur ..	1	—
Cawnpore district (North-East).	The tahsils of Cawnpore and Bilhaur, excluding the municipality and cantonment of Cawnpore and the notified area of Juh. .	1	—

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Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.
	(ii) Rural—contd		
Cawnpore district (West).	The tahsils of Derapur and Akbarpur ..	1	—
Fatehpur district (East).	The tahsil of Khaga and parganas Fatehpur and Haswa of the Fatehpur tahsil ..	1	—
Fatehpur district (West).	The tahsil of Khajurha and parganas Aya Shah, Muttair and Ghazipur of the Fatehpur tahsil ..	1	—
Allahabad district (Doaba).	The tahsils of Chail, Sirathu and Manjhanpur, excluding the municipality and cantonment of Allahabad ..	1	—
Allahabad district (Jamnapur).	The tahsils of Karchana and Meja ..	1	—
Allahabad district (Gangapur).	The tahsils of Phulpur, Soran and Handia ..	1	—
Jhansi district (South).	The tahsils of Lalitpur and Mahroni ..	1	—
Jhansi district (North).	The tahsils of Garautha, Moth, Mau and Jhansi, excluding the Municipality, and cantonment of Jhansi and the notified area of Garhia Phatak ..	1	—
Jalaun district ..	Jalaun district ..	2	1
Hamirpur district ..	Hamirpur district ..	1	—
Banda district (North).	The tahsils of Baberu and Banda ..	1	—
Banda district (South).	The tahsils of Girwan (Naraini), Karwandi and Mau ..	1	—
Benares district (West).	The tahsil of Benares, excluding the municipality and cantonment of Benares ..	1	—
Benares district (East).	The tahsil of Chandauli ..	1	—
Mirzapur district (North).	The tahsil of Chunar and Mirzapur, excluding the municipality of Mirzapur-cum-Bindhyachal ..	2	1
Mirzapur district (South).	The tahsils of Dudhi and Robertsganj ..	1	—
Jaunpur district (East).	The tahsils of Jaunpur, Kerakat, and Mariahu, excluding the municipality of Jaunpur ..	1	—
Jaunpur district (West).	The tahsils of Machhlishahr and Shahganj ..	1	—
Ghazipur district (East).	The tahsil of Mohammadabad and the Zamania pargana of the Ghazipur tahsil ..	1	—
Ghazipur district (West).	The tahsil of Saidpur, and the Ghazipur, Karanda and Pachotar parganas of the Ghazipur tahsil, excluding the municipality of Ghazipur ..	1	—
Ballia district (South) ..	The tahsil of Ballia ..	1	—
Ballia district (North) ..	The tahsils of Kasra and Bansdih ..	1	—
Gorakhpur district (South-West).	The tahsil of Bangaon ..	1	—
Gorakhpur district (South-East).	The tahsil of Deoria ..	1	—
Gorakhpur district (West).	The tahsil of Gorakhpur, excluding the municipality, notified area and railway colony of Gorakhpur ..	1	—
Gorakhpur district (Centre).	The tahsil of Hata ..	1	—
Gorakhpur district (North).	The tahsil of Maharajganj ..	2	1
Gorakhpur district (North-East).	The tahsil of Padrauna ..	1	—
Basti district (South-East).	The tahsil of Khalilabad ..	1	—

Name of Constituency.	Extent of Constituency	No. of seats.	Scheduled Caste seats.
	(ii) <i>Rural</i> —contd.		
Basti district (North-East).	The Trans-Rapti tracts of Bansi and Domariaganj tahsils.	1	—
Basti district (South) ..	The Cis-Rapti tracts of Bansi and Domariaganj tahsils together with two northern parganas (Maghar West and Basti East) of Basti tahsil.	2	1
Basti district (West) ..	The Harraiya tahsil and the two southern parganas (Nagar East and Mahauli West) of Basti tahsil.	1	—
Azamgarh district (West).	The tahsils of Ahraula and Nizamabad ..	2	1
Azamgarh district (South).	The tahsils of Deogaon and Mohammadabad ..	1	—
Azamgarh district (North-East).	The tahsils of Ghosi and Sagri ..	1	—
Naini Tal district ..	Naini Tal district ..	1	—
Almora district ..	Almora district ..	2	1
Garhwal district (South-East).	The sub-division of Lansdowne ..	1	—
Garhwal district (North-West).	The sub-divisions of Pauri and Chamoli ..	1	—
Lucknow district ..	Lucknow district, excluding the municipality and cantonment of Lucknow and the Charbagh and Alambagh notified area.	1	—
Unao district (West) ..	The tahsils of Safipur and Unao ..	1	—
Unao district (East) ..	The tahsil of Hasanganj ..	1	—
Unao district (South) ..	The tahsil of Purwa ..	1	—
Rae Bareilly district (North-East).	The tahsils of Maharajganj and Salon ..	2	1
Rae Bareilly district (South-West).	The tahsils of Dalmau and Rae Bareilly ..	1	—
Hardoi district (North-West).	The tahsils of Bilgram and Shahabad ..	1	—
Hardoi district (South-East).	The tahsil of Sandila ..	1	—
Hardoi district (Centre).	The tahsil of Hardoi ..	1	—
Sitapur district (North-West).	The tahsils of Sitapur and Misrikh, excluding the Municipality and cantonment of Sitapur.	2	1
Sitapur district (East) ..	The tahsil of Biswan ..	1	—
Sitapur district (South).	The tahsil of Sidhauri ..	1	—
Kheri district (South-West).	The tahsils of Lakhimpur and Mohamdi ..	1	—
Kheri district (North-East).	The tahsil of Nighasan ..	1	—
Fyzabad district (West).	The tahsils of Fyzabad and Bikapur, excluding the municipality and cantonment of Fyzabad-cum-Ajodhya.	1	—
Fyzabad district (East).	The tahsils of Akbarpur and Tanda ..	2	1
Sultanpur district (East).	The tahsil of Kadipur ..	1	—
Sultanpur district (West).	The tahsil of Musafirkhana, excluding the pargana of Isauli, and the tahsil of Amethi.	1	—
Sultanpur district (Centre).	The tahsil of Sultanpur and the Isauli pargana of the Musafirkhana tahsil.	1	—
Bahraich district (North).	The tahsil of Nanpara and the Tulsiapur, Bhinga and Bahraich parganas of the Bahraich tahsil, excluding the municipality of Bahraich.	1	—

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.
(ii) <i>Rural</i> —contd.			
Bahraich district (South)	The tahsil of Kaisarganj and the Ikauna pargana of the Bahraich tahsil.	1	—
Gonda district (West) ..	The tahsil of Gonda ..	1	—
Gonda district (South) ..	The tahsil of Tarabganj ..	1	—
Gonda district (North-East).	The tahsil of Utraula ..	2	1
Partabgarh district (West).	The tahsil of Kunda ..	1	—
Partabgarh district (East).	The tahsils of Partabgarh and Patti ..	1	—
Bara Banki district (South).	The tahsils of Hydergarh and Ramsanehighat.	1	—
Bara Banki district (North).	The tahsils of Fatehpur and Nawabganj ..	2	1

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> .		
Meerut-cum-Hapur-cum-Bulandshahr-cum-Khurja-cum-Nagina cities.	The municipalities of Hapur, Bulandshahr, Khurja and Nagina and the municipality and cantonment of Meerut.	1
Dehra Dun-cum-Hardwar-cum-Saharanpur-cum-Muzaffarnagar cities.	The municipalities of Saharanpur, Muzaffarnagar and Hardwar Union and the municipality and cantonment of Dehra Dun.	1
Moradabad-cum-Amroha-cum-Chandausi cities.	The municipalities of Moradabad, Amroha and Chandausi.	1
Bareilly-cum-Pilibhit cities.	The municipality of Pilibhit and the municipality and cantonment of Bareilly.	1
Budaun-cum-Shahjahanpur-cum-Sambhal cities.	The municipalities of Budaun and Sambhal and the municipality and cantonment of Shahjahanpur.	1
Agra-cum-Farrukhabad-cum-Etawah cities.	The municipalities and cantonments of Agra and Farrukhabad-cum-Fatehgarh and the municipality of Etawah.	1
Aligarh - cum - Hathras-cum-Muttra cities.	The municipalities of Koil-Aligarh and Hathras and the municipality and cantonment of Muttra.	1
Cawnpore city ..	The municipality and cantonment of Cawnpore and the notified area of Juh.1.	1
Allahabad - cum - Jhansi cities	The municipalities and cantonments of Allahabad and Jhansi and the notified area of Garhia Phatak.	1
Benares - cum-Mirzapur cities.	The municipality and cantonment of Benares and the municipality of Mirzapur-cum-Bindhyachal.	1
Ghazipur-cum- Jaunpur-cum Gorakhpur cities.	The municipalities of Ghazipur and Jaunpur and the municipality, notified area and railway colony of Gorakhpur.	1
Lucknow city ..	The municipality and cantonment of Lucknow and the Charbagh and Alambagh notified area.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> —contd.		
Fyzabad-cum-Sitapur-cum-Bahraich cities.	The municipalities and cantonments of Sitapur and Fyzabad-cum-Ajodhya and the municipality of Bahraich.	1
(ii) <i>Rural</i> .		
Dehra Dun and Saharanpur (East) districts.	Dehra Dun district excluding the municipality and cantonment of Dehra Dun, and the Roorkee tahsil of the Sharanpur district excluding the municipality of Hardwar Union	1
Saharanpur district (North).	The tahsil of Saharanpur, excluding the municipality of Saharanpur.	1
Saharanpur district (South-West).	The tahsils of Deoband and Nakur	1
Muzaffarnagar district (East).	The tahsils of Jansath and Muzaffarnagar, excluding the municipality of Muzaffarnagar.	1
Muzaffarnagar district (West).	The tahsils of Budhana and Kairana	1
Meerut district (East) ..	The tahsils of Hapur, Mawana and Meerut, excluding the municipality of Hapur and the municipality and cantonment of Meerut.	1
Meerut district (West)	The tahsils of Baghpat, Sardhana and Ghaziabad.	1
Bulandshahr district (East).	The tahsils of Bulandshahr and Anupshahr, excluding the municipality of Bulandshahr.	1
Bulandshahr district (West).	The tahsils of Sikandrabad and Khurja, excluding the municipality of Khurja	1
Aligarh district ..	Aligarh district, excluding the municipalities of Hathras and Koil-Aligarh.	1
Muttra and Agra districts.	Muttra and Agra districts, excluding the municipalities and cantonments of Muttra and Agra.	1
Mainpuri and Etah districts.	Mainpuri and Etah districts	1
Naini Tal, Almora and Bareilly (North) districts.	Naini Tal and Almora districts and the tahsil of Baheri in the Bareilly district.	1
Bareilly district (East-South and West).	The tahsils of Aonla, Bareilly, Faridpur and Nawabganj, excluding the municipality and cantonment of Bareilly.	1
Bijnor district (South-East)	The tahsils of Nagina and Dhampur, excluding the municipality of Nagina.	1
Garhwal and Bijnor (North-West) districts	Garhwal district, and the tahsils of Bijnor and Najibabad in the Bijnor district.	1
Moradabad district (North-West).	The tahsils of Hasanpur and Amroha, excluding the municipality of Amroha.	1
Moradabad district (North-East).	The tahsils of Thakurdwara and Moradabad, excluding the municipality of Moradabad.	1
Moradabad district (South-East).	The tahsils of Bilari and Sambhal, excluding the municipalities of Chandausi and Sambhal.	1
Budaun district (West).	The tahsils of Bisauli, Gunnaur and Sahaswan ..	1
Budaun district (East).	The tahsils of Budaun and Dataganj, excluding the municipality of Budaun.	1
Shahjahanpur district ..	Shahjahanpur district, excluding the municipality and cantonment of Shahjahanpur.	1
Pilibhit district ..	Pilibhit district, excluding the municipality of Pilibhit.	1
Farrukhabad district ..	Farrukhabad district, excluding the municipality and cantonment of Farrukhabad-cum-Fatehgarh.	1
Erawah and Cawnpore districts.	Etawah district, excluding the municipality of Etawah, and Cawnpore district, excluding the municipality and cantonment of Cawnpore and the notified area of Juhi.	1

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Name of Constituency.	Extent of Constituency.	No. of seats.
(ii) <i>Rural</i> —contd.		
Fatehpur and Banda districts.	Fatehpur and Banda districts ..	1
Allahabad district (South-West).	Allahabad district, excluding the tahsils of Handia and Phulpar, and the municipality and cantonment of Allahabad.	1
Jhansi, Jalaun and Hamirpur districts.	Jhansi, Jalaun and Hamirpur districts, excluding the municipality and cantonment of Jhansi and the notified area of Garhna Phatak.	1
Jaunpur and Allahabad (North-East) districts.	Jaunpur district, and the tahsils of Handia and Phulpar of the Allahabad district, excluding the municipality of Jaunpur.	1
Benares and Mirzapur districts.	Benares district, excluding the municipality and cantonment of Benares, and Mirzapur district excluding the municipality of Mirzapur-cum-Bindhyachal.	1
Ghazipur and Ballia districts.	Ghazipur district, excluding the municipality of Ghazipur, and Ballia district.	1
Gorakhpur district (West).	The tahsils of Gorakhpur, Maharajganj and Bainsgaon, excluding the municipality, notified area and railway colony of Gorakhpur.	1
Gorakhpur district (East).	The tahsils of Hata, Padrauna and Deoria ..	1
Basti district (West) ..	The tahsils of Domariaganj and Hariya ..	1
Basti district (South-East).	The tahsils of Khalilabad and Basti ..	1
Basti district (North-East).	The tahsil of Bansi ..	1
Azamgarh district (West).	The tahsils of Ahraula, Deogaon and Nizamabad.	1
Azamgarh district (East)	The tahsils of Ghosi, Mohammadabad and Sagri.	1
Lucknow and Unao districts.	Lucknow district, excluding the municipality and cantonment of Lucknow, and the Charbagh and Alambagh notified area, and Unao district.	1
Rae Bareilly district ..	Rae Bareilly district ..	1
Sitapur district ..	Sitapur district, excluding the municipality and cantonment of Sitapur.	1
Hardoi district ..	Hardoi district ..	1
Kheri district ..	Kheri district ..	1
Fyzabad district ..	Fyzabad district, excluding the municipality and cantonment of Fyzabad cum-Ajodhya.	1
Gonda district (South-West).	The tahsils of Gonda and Tarabganj ..	1
Gonda district (North-East).	The tahsil of Utraula ..	1
Bahraich district (North)	The Tahsil of Nanpara ..	1
Bahraich district (South)	The tahsils of Bahraich and Kaisarganj, excluding the municipality of Bahraich.	1
Sultanpur district ..	Sultanpur district ..	1
Partabgarh district ..	Partabgarh district ..	1
Bara Banki district ..	Bara Banki district ..	1

III.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>General Urban</i> .		
Benares City ..	The municipality and cantonment of Benares ..	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(ii) <i>General Rural.</i>		
Meerut district (North).	The tahsils of Meerut and Sardhana, excluding the municipality and cantonment of Meerut.	1
Cawnpore district (North East).	The tahsils of Cawnpore and Bilhaur, excluding the municipality and cantonment of Cawnpore and the notified area of Juhi.	1
Fyzabad district (West).	The tahsils of Fyzabad and Bikapur, excluding the municipality and cantonment of Fyzabad-cum-Ajodhya.	1
(iii) <i>Muhammadan Urban.</i>		
Lucknow City	The municipality and cantonment of Lucknow and the Charbagh and Alambagh notified area.	1
(iv) <i>Muhammadan Rural.</i>		
Moradabad district (North-East)	The tahsils of Thakurdwara and Moradabad excluding the municipality of Moradabad.	1

IV.—ANGLO-INDIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency	No of seats.
The United Provinces Anglo-Indian Constituency.	The United Provinces	1

V.—EUROPEAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
The United Provinces European Constituency	The United Provinces	2

VI.—INDIAN CHRISTIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
The United Provinces Indian Christian Constituency.	The United Provinces	2

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VII.—COMMERCE AND INDUSTRY CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
The Upper India Chamber of Commerce.	Non territorial	2
The United Provinces Chamber of Commerce and the Merchants' Chamber of the United Provinces.	Non-territorial	2

VIII.—LANDHOLDERS' CONSTITUENCIES

Name of Constituency.	Extent of Constituency.	No. of seats.
The British Indian Association of Oudh.	Non-territorial ..	4
The Agra Province Zamindars' Association, Allahabad.	Non-territorial ..	2

IX.—LABOUR CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No of members.
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(i) *Trade Union.*

Trade Union Constituency.	The United Provinces. ..	1
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(ii) *Non-Union Labour.*

Cawnpore Industrial Factory Labour Constituency.	Factories in the area comprised in the Cawnpore City general urban constituency.	1
Industrial Factory labour in Lucknow, Agra, Aligarh and Allahabad.	Factories in the area comprised in the Lucknow City, Agra City, and Allahabad City general urban constituencies and the municipality of Koil-Aligarh.	1

X.—UNIVERSITY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of members.
University ..	Non-territorial ..	1

SIXTH SCHEDULE.
THE PUNJAB CONSTITUENCIES.

1.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Castes seats.
(i) <i>Urban.</i>			
Southern Towns ..	The municipalities of Bhiwani, Hissar, Sirsa, Hansi, Rohtak, Sonapat, Beri, Jhajjar, Rewari and Palwal; the small towns of Budhlada, Tohana, Mehram and Ifidayatpur Chhaoni (Gurgaon); and the Civil Lines of Rohtak.	1	—
South-Eastern Towns ..	The municipalities of Panipat, Karnal, Kaithal, Shahabad, Ambala, Ambala Cantonment Sadr Bazar, Kalka, Jagadhri, Sadhaura, Rupar, Simla, Ludhiana, Jagraon and Raikot; the cantonments of Ambala, Kasauli, Dagshai, Sabathu and Jutogh; and the notified areas of Kaithal Mandi, Karnal Civil Station and Ambala Civil Station.	1	—
Eastern Towns ..	The municipalities of Dharamsala, Hoshiarpur, Urmur Tanda, Kartarpur, Jullundur, Nakodar, Moga, Ferozcpore, Muktsar, Abohar and Fazilka; the cantonments of Dharamsala, Jullundur and Ferozcpore; and the Civil Lines of Hoshiarpur.	1	—
Lahore City ..	The municipality and cantonment of Lahore ..	1	—
Amritsar City ..	The municipality and cantonment of Amritsar.	1	—
North-Eastern Towns ..	The municipalities of Chunian, Kasur, Patti, Beghbanpura cum Bhogiwal Jandiala, Tarn Taran, Batala, Gurdaspur, Pathankot, Dalhousie, Sialkot, Pasrur, Wazirabad, Hafizabad, Gujranwala, Sheikhupura and Nankana Sahib; the cantonments of Balun, Bakloh and Sialkot; the small towns of Mandi Pattoki, and Hardeo Daska; and the Civil Lines of Gurdaspur.	1	—
North-Western Towns ..	The municipalities of Gujrat, Jalalpur Jattan, Bhera, Sargodha, Sahiwal, Khushab, Jhelum, Chakwal, Pind Dadan Khan, Rawalpindi, Murree, Hazro, Campbellpur, Pindigheb, Mianwali, Isakhel, Kalabagh, Jhang-Maghiana and Chiniot; the cantonments of Jhelum, Rawalpindi, Murree, Campbellpur and Attock; and the notified area of Gujrat Civil Lines.	1	—
South-Western Towns ..	The municipalities of Pakpattan, Montgomery, Okara, Kamalia, Gojra, Lyallpur, Multan, Khanewal, Muzaffargarh, Leiah, Dera Ghazi Khan and Jampur; the cantonment of Multan; and the Civil Lines of Muzaffargarh.	1	—
(ii) <i>Rural.</i>			
Hissar South ..	The Hissar and Bhiwani tahsils of the Hissar district.	1	—
Hansi ..	The Hansi tahsil of the Hissar district ..	1	—
Hissar North ..	The Fatehabad and Sirsa tahsils of the Hissar district.	1	—
Rohtak North ..	The Sonapat tahsil and the police station areas of Gohana and Barauda of the Rohtak district.	1	—

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Caste seats.
(ii) <i>Rural</i> —contd.			
Rohtak Central ..	The Rahtak tahsil and the police station area of Meham of the Rohtak district.	1	—
Jhajjar ..	The Jhajjar tahsil of the Rahtak district ..	1	—
North-West Gurgaon ..	The Gurgaon and Rewari tahsils of the Gurgaon district.	1	—
South-East Gurgaon ..	The Firozepur-Jhirka, Nuh, Palwal and Ballahgarh tahsils of the Gurgaon district.	2	1
Karnal South ..	The Karnal and Panipat tahsils of the Karnal district.	1	—
Karnal North ..	The Kaithal and Thanesar tahsils of the Karnal district.	2	1
Ambala and Simla ..	The Ambala and Simla districts ..	2	1
Kangra North ..	The police station areas of Shahpur, Dharamsala, Kangra and Palampur (excluding the zail of Bhawal of the Kangra district.	1	—
Kangra South ..	The police station areas of Barsar, Hamirpur and Sujampur of the Kangra district.	1	—
Kangra East ..	The police station areas of Kulu and Seroj and the zail of Bhawal of the Palampur tahsil of the Kangra district.	1	—
Kangra West ..	The police station areas of Indaura, Nurpur Haripur and Jawalamukhi of the Kangra district.	1	—
Hoshiarpur West ..	The Hoshiarpur, Dasuya and Garhshankar tahsils of the Hoshiarpur district.	2	1
Una ..	The Una tahsil of the Hoshiarpur district ..	1	—
Jullundur ..	The Jullundur district ..	2	1
Ludhiana and Ferozepore ..	The Ludhiana and Ferozepore districts ..	2	1
West Lahore Division ..	The Lahore, Gujranwala and Sheikhupura districts.	1	—
Amritsar and Sialkot ..	The Amritsar and Sialkot districts ..	2	1
Gurdaspur ..	The Gurdaspur district ..	1	—
Rawalpindi Division ..	The Rawalpindi division ..	1	—
South-East Multan Division.	The Montgomery district and the Mailsi, Khanewal and Kabirwala tahsils of the Multan district.	1	—
Lyallpur and Jhang ..	The Lyallpur and Jhang districts ..	2	1
West Multan Division..	The Muzaffargarh and Dera Ghazi Khan districts and the Multan, Shujabad and Lodhran tahsils of the Multan, district.	1	—

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> .		
Southern Towns ..	The municipalities of Bhiwani, Hissar, Sirsa, Palwal, Hansi, Rohtak, Sonapat, Beri, Jhajjar, Rewari, Panipat, Karnal, Kaithal and Shahabad; the notified areas of Kaithal Mandi and Karnal Civil Station; the small towns of Budhalada, Tohana, Meham and Hidayatpur Chhaoni (Gurgaon); and the Civil Lines of Rohtak.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> —contd.		
South-Eastern Towns ..	The municipalities of Ambala, Ambala Cantonment Sadr Bazar, Kalka, Jagadhri, Sadhaura, Rupar, Simla, Ludhiana, Jagraon and Raikot; the cantonments of Ambala, Kasauli, Dagshai, Sabathu, and Jutogh; and the notified area of Ambala Civil Station	1
Eastern Towns ..	The municipalities of Dharamsala, Hoshiarpur, Moga, Urmur Tanda, Kartarpur, Jullundur, Nakodar, Moga, Ferozepore, Muktsar, Abolar, Fazilka Chunian, Kasur and Patti; the cantonments of Dharamsala, Jullundur and Ferozepore; the small town of Mandi Pattoki; and the Civil Lines of Hoshiarpur.	1
Inner Lahore ..	Lahore City within the Circular Road	1
Outer Lahore ..	The municipal area of Lahore outside the Circular Road; the cantonment of Lahore and the municipality of Baghbanpura cum Bhogiwal.	1
Amritsar City ..	The municipality and cantonment of Amritsar	1
North Eastern Towns ..	The municipalities of Jandiala, Tarn Taran, Batala, Gurdaspur, Pathankot, Dalhousie, Sialkot, Pasrua, Wazirabad, Hafizabad, Gujranwala, Sheikhupura and Nankana Sahib; the cantonments of Balun, Bakloh and Sialkot; the small town of Harid Daska, and the Civil Lines of Gurdaspur.	1
Rawalpindi Division Towns.	The municipalities of Gujrat, Jalalpur Jattan, Bhera, Sargodha, Sahiwal, Khushab, Jhelum, Chakwal, Pind Dadan Khan, Rawalpindi, Murree, Hazro, Campbellpur, Pindigheb, Mianwali, Isakhel and Kalabagh; the cantonments of Jhelum, Rawalpindi, Murree, Campbellpur and Attock; and the notified area of Gujrat Civil Lines.	1
Multan Division Towns	The municipalities of Pakpattan, Montgomery, Okara, Kamalia, Gojra, Lyallpur, Jhang-Maghiana, Chiniot, Multan, Khanewal, Muzaffargarh, Leiah, Dera Ghazi Khan and Jampur; the cantonment of Multan; and the Civil Lines of Muzaffargarh.	1
(ii) <i>Rural</i> .		
Hissar ..	The Hissar district	1
Rohtak ..	The Rohtak district	1
North West Gurgaon ..	The tahsils of Gurgaon, Rewari, Ballabgarh and Nuh of the Gurgaon district.	1
South-East Gurgaon ..	The tahsils of Ferozpur-Jhirka and Palwal of the Gurgaon district.	1
Karnal ..	The Karnal district	1
Ambala and Simla ..	The Ambala and Simla districts	1
Kangra and Eastern Hoshiarpur.	The Kangra district and the Dasnys and Una tahsils of the Hoshiarpur district.	1
Hoshiarpur West ..	The Hoshiarpur and Garhshankar tahsils of the Hoshiarpur district	1
Jullundur North ..	The Jullundur and Nawashahr tahsils of the Jullundur district.	1
Jullundur South ..	The Phillaur and Nakodar tahsils of the Jullundur district.	1
Ludhiana ..	The Ludhiana district	1
Ferozore Central ..	The Ferozepore and Muktsar tahsils of the Ferozepore district.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(ii) <i>Rural</i> —contd		
Ferozepore East	.. The Zira and Moga tahsils of the Ferozepore district.	1
Fazilka	.. The Fazilka tahsil of the Ferozepore district ..	1
Lahore	.. The Lahore tahsil of the Lahore district ..	1
Chunian	.. The Chunian tahsil of the Lahore district ..	1
Kasur	.. The Kasur tahsil of the Lahore district ..	1
Amritsar	.. The Amritsar tahsil of the Amritsar district ..	1
Tarn Taran	.. The Tarn Taran tahsil of the Amritsar district ..	1
Ajnala	.. The Ajnala tahsil of the Amritsar district ..	1
Gurdaspur East	.. The Gurdaspur and Pathankot tahsils of the Gurdaspur district.	1
Batala	.. The Batala tahsil of the Gurdaspur district ..	1
Shakargarh	.. The Shakargarh tahsil of the Gurdaspur district.	1
Sialkot North	.. The police station areas of Phuklian, Chaprar, Sialkot and Sambrial of the Sialkot district.	1
Sialkot Central	.. The police station areas of Daska, Pasrur, Satrah and Nidoke of the Sialkot district.	1
Sialkot South	.. The police station areas of Phillaura, Zafarwal, Qila Sobha Singh, Narowal and Raya of the Sialkot district.	1
Gujranwala North	.. The Wazirabad tahsil and the police station area of Qila Didar Singh of the Gujranwala district.	1
Gujranwala East	.. The Gujranwala tahsil (excluding the police station area of Qila Didar Singh) of the Gujranwala district.	1
Hafizabad	.. The Hafizabad tahsil of the Gujranwala district.	1
Sheikhupura	.. The Sheikhupura tahsil of the Sheikhupura district.	1
Nankana Sahib	.. The Nankana Sahib tahsil of the Sheikhupura district.	1
Shahdara	.. The Shahdara tahsil of the Sheikhupura district.	1
Gujrat North	.. The police station areas of Sarai Alamgir, Kharian and Dinga of the Gujrat district.	1
Gujrat East	.. The police station areas of Karianwala and Lala Musa of the Gujrat district.	1
South-East Gujrat	.. The police station areas of Jalalpur Jattan, Gujrat Sadr and Kunjah of the Gujrat district.	1
North-West Gujrat	.. The police station areas of Pindi Baha-ud-Din, Miana Gondal and Kothala Sheikhan (excluding the zail of Mianwal) of the Gujrat district.	1
South-West Gujrat	.. The police station areas of Pahrrianwali, Phalia and Qadirabad and the zail of Mianwal of the Gujrat district.	1
Shahpur	.. The Shahpur tahsil of the Shahpur district ..	1
Khushab	.. The Khushab tahsil of the Shahpur district ..	1
Bhalwal	.. The Bhalwal tahsil of the Shahpur district ..	1
Sargodha	.. The Sargodha tahsil of the Shahpur district ..	1
Jhelum	.. The Jhelum tahsil of the Jhelum district ..	1
Pind Dadan Khan	.. The Pind Dadan Khan tahsil of the Jhelum district.	1
Chakwal	.. The Chakwal tahsil of the Jhelum district ..	1
Rawalpindi Sadr	.. The Rawalpindi tahsil of the Rawalpindi district.	1
Gujar Khan	.. The Gujar Khan tahsil of the Rawalpindi district.	1
Rawalpindi East	.. The Murree and Kahuta tahsils of the Rawalpindi district.	1
Attock North	.. The Attock tahsil, the Bahtar zail of the Fatehjang tahsil and the Nara Jalwal and Basal zails of the Pindigheb tahsil of the Attock district.	1
Attock Central	.. The Fatehjang tahsil (excluding the Bahtar zail) and the Dandi, Kamrial, Khaur, Khunda Kamal-	1

Name of Constituency.	Extent of Constituency.	No. of seats.
	(ii) <i>Rural</i> —contd.	
Attock South ..	pur, Khunda Thatti Nur Ahmed Shah and Pindigheb zails of the Pindigheb tahsil of the Attock district.	1
Mianwali North ..	The Talagang tahsil and the Jand, Narrah, Makhad, and Maira zails of the Pindigheb tahsil of the Attock district.	1
Mianwali South ..	The Isakhel and Mianwali tahsils of the Mianwali district excluding the police station area of Piplan and the Wan Bhachran zail.	1
Montgomery ..	The Bhakkar tahsil, the police station area of Piplan and the Wan Bhachran zail of the Mianwali district.	1
Okara ..	The Montgomery tahsil of the Montgomery district.	1
Dipalpur ..	The Okara tahsil of the Montgomery district ..	1
Pakpattan ..	The Dipalpur tahsil of the Montgomery district.	1
Lyallpur ..	The Pakpattan tahsil of the Montgomery district ..	1
Samundri ..	The Lyallpur tahsil of the Lyallpur district ..	1
Toba Tek Singh ..	The Samundri tahsil of the Lyallpur district ..	1
Jaranwala ..	The Toba Tek Singh tahsil of the Lyallpur district.	1
Jhang East ..	The Jaranwala tahsil of the Lyallpur district ..	1
Jhang Central ..	The police station areas of Chinniot, Lalian and Bhowana of the Jhang district.	1
Jhang West ..	The police station areas of Jhang Sadr, Kotwali (rural), Qadirpur, Mochiwala and Barana of the Jhang district.	1
Multan ..	The police station areas of Shorkot, Garh Maharaja, Atharan Hazari and Massan of the Jhang District.	1
Shujabad ..	The Multan tahsil of the Multan district ..	1
Lodhran ..	The Shujabad tahsil of the Multan district ..	1
Malisi ..	The Lodhran tahsil of the Multan district ..	1
Khanewal ..	The Malisi tahsil of the Multan district ..	1
Kabirwala ..	The Khanewal tahsil of the Multan district ..	1
Muzaffargarh Sadr ..	The Kabirwala tahsil of the Multan district ..	1
Alipur ..	The Muzaffargarh tahsil of the Muzaffargarh district.	1
Muzaffargarh North ..	The Alipur tahsil of the Muzaffargarh district ..	1
Dera Ghazi Khan North ..	The Kot Adu and Leiah tahsils of the Muzaffargarh district.	1
Dera Ghazi Khan Central ..	The police station areas of Vehoa, Retra, Taunsa, Kala, Batil and Dera Ghazi Khan Sadr of the Dera Ghazi Khan district.	1
Dera Ghazi Khan South ..	The police station areas of Drahman, Kot Chutta, Choti and Jampur of the Dera Ghazi Khan district.	1
	The police station areas of Dajal, Harrand, Kot Mithan, Rajanpur, Rojhan, Fazilpur and Shahwali of the Dera Ghazi Khan district.	1

III.—SIKH CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
	(i) <i>Urban</i> .	
Eastern Towns ..	The municipalities of Bhiwani, Hissar, Sirsa, Hansi, Rohtak, Sonapat, Beri, Jhajjar, Rewari,	1

Name of Constituency.	Extent of Constituency.	
(i) <i>Urban</i> —contd.		
	Palwal, Panipat, Karnal, Kaithal, Shahabad, Ambala, Ambala Cantonment Sadr Bazar, Jagadhri, Sadhaura, Rupar, Kalka, Simla, Ludhiana, Jagraon, Raikot, Dharamsala, Hoshiarpur, Urmur Tanda, Kartarpur, Jullundur, Nakodar, Moga, Ferozepore, Muktsar, Abohar, Fazilka, Amritsar, Jandiala, Tarn Taran, Batala, Gurdaspur, Pathankot, Dalhousie, Sialkot and Pasrur; the cantonments of Ambala, Kasauli, Dagshai, Sabathu, Jutogh, Dharamsala, Jullundur, Ferozepore, Amritsar, Balum, Bakloh and Sialkot; the notified areas of Kaithal Mandi, Karnal Civil Station and Ambala Civil Station, the small towns of Budhlada, Tohana, Meham, Hidayatpur Chhoani (Gurgaon) and Hardeo Daska; and the Civil Lines of Rohtak, Hoshiarpur and Gurdaspur.	
Western Towns	The municipalities of Chuman, Lahore, Baghbanpura-cum-Bhogiwal, Kasur, Patti, Wazirabad, Hafizabad, Gujranwala, Sheikhupura, Nankana Sahib, Gujrat, Jalalpur Jattan, Bhera, Sargodha, Saliwal Khushab, Jhelum, Chakwal, Pind Dadan Khan, Rawalpindi, Murree, Hazro, Campbellpur, Pindigheb, Mianwali, Isakhel, Kalabagh, Pakpattan, Montgomery, Okara, Kamalia, Gajra, Lyallpur, Jhang-Maghiana, Chiniot, Multan, Khanewal, Muzaffargarh, Leiah, Dera Ghazi Khan and Jampur; the cantonments of Lahore, Jhelum, Rawalpindi, Murree, Campbellpur, Attock and Multan; the notified area of Gujrat Civil Lines; the small town of Mandi Pattoki, and the Civil Lines of Muzaffargarh.	1
(ii) <i>Rural</i> .		
South-East Punjab	The districts of Hissar, Rohtak, Gurgaon, Karnal and Simla and the Ambala, Naraingarh and Jagadhri tahsils of the Ambala district.	1
Ambala North	The Kharar and Rupar tahsils of the Ambala district.	1
Kangra and Northern Hoshiarpur.	The Kangra district and the Hoshiarpur and Dasuya tahsils of the Hoshiarpur district.	1
Hoshiarpur South	The Garhshankar and Una tahsils of the Hoshiarpur district.	1
Jullundur West	The Jullundur and Nakodar tahsils of the Jullundur district.	1
Jullundur East	The Nawashahr and Phillaur tahsils of the Jullundur district.	1
Ludhiana East	The Samrala tahsil and the police station areas of Sahnewal and Ludhiana Sadr of the Ludhiana district.	1
Ludhiana Central	The Ludhiana tahsil of the Ludhiana district excluding the police station areas of Sahnewal and Ludhiana Sadr.	1
Jagraon	The Jagraon tahsil of the Ludhiana district	1
Ferozepore North	The Zira and Ferozepore (excluding Nathana sub-tahsil) tahsils and the police station areas of Jalalabad and Guru Har Sahai of the Ferozepore district.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(ii) <i>Rural</i> —contd.		
Ferozepore East ..	The police station areas of Moga, Mehna and Nihal Singhwala of the Ferozepore district.	1
Ferozepore West ..	The Fazilka tahsil and the police station area of Kot Bhai of the Ferozepore district.	1
Ferozepore South ..	The Nathana sub-tahsil and the police station areas of Bagha Purna and Muktsar of the Ferozepore district.	1
Lahore West ..	The Lahore and Chunian tahsils of the Lahore district.	1
Kasur ..	The Kasur tahsil of the Lahore district ..	1
Amritsar North ..	The police station areas of Ajnala, Ramdas, Lopoke, Gharinda and Jhabal and the zails of Bagga and Sainsra in the police-station area of Majitha in the Ajnala tahsil of the Amritsar district.	1
Amritsar Central ..	The police-station areas of Amritsar Sadr, Kathunangal and Jandiala and the zails of Mehta and Sheron Bagha in the police-station areas of Beas and the zails of Johal and Sohian in the police-station area of Majitha in the Amritsar tahsil of the Amritsar district.	1
Amritsar South ..	The police station areas of Tarn Taran, Sarhali and Warrowal and the zails of Chima Bath and Butala in the police station area of Beas of the Amritsar district.	1
Gurdaspur North ..	The Gurdaspur, Pathankot and Shakargarh tahsils of the Gurdaspur district.	1
Batala ..	The Batala tahsil of the Gurdaspur district ..	1
Sialkot ..	The Sialkot districts ..	1
Gujranwala and Shahdara ..	The Gujranwala district and the Shahdara tahsil of the Sheikhupura district	1
Sheikhupura West ..	The Sheikhupura and Nankana Sahib tahsils of the Sheikhupura district.	1
Gujrat and Shahpur ..	The Gujrat and Shahpur district ..	1
North-West Punjab ..	The Jhelum, Rawalpindi, Attock and Mianwali districts.	1
Montgomery East ..	The Okara, Dipalpur and Pakpattan tahsils of the Montgomery district.	1
Lyallpur West ..	The Lyallpur and Toba Tek Singh tahsils of the Lyallpur district.	1
Lyallpur East ..	The Samundri and Jaranwala tahsils of the Lyallpur district.	1
South-West Punjab ..	The Jhang, Multan, Muzaffargarh and Dera Ghazi Khan districts and the Montgomery tahsil of the Montgomery district.	1

IV.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>General Urban</i> .		
Lahore City General ..	The Municipality and cantonment of Lahore ..	1
(ii) <i>Muhammadan Urban</i> .		
Inner Lahore Muhammadan ..	Lahore City within the Circular Road ..	1
Outer Lahore Muhammadan ..	The municipal area of Lahore outside the Circular Road, the cantonment of Lahore and the municipality of Baghbanpura-cum Bhogiwal ..	1
(iii) <i>Sikh</i> .		
Amritsar ..	The whole of the Amritsar district ..	1

V.—ANGLO-INDIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Anglo-Indian ..	The Punjab ..	1

VI.—EUROPEAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
European ..	The Punjab ..	1

VII.—INDIAN CHRISTIAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
East Central Punjab ..	The Lahore, Amritsar, Gurdaspur and Sialkot districts.	1
West Central Punjab ..	The Gujranwala, Sheikhupura, Shahpur, Montgomery, Lyallpur and Multan districts.	1

VIII.—COMMERCE AND INDUSTRY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Punjab Commerce and Industry.	The Northern India Chamber of Commerce, the Punjab Chamber of Commerce, the Indian Chamber of Commerce and the Punjab Trades Association.	1

IX.—LANDHOLDERS' CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
East Punjab Land-holders.	The Ambala division and the Kangra, Hoshiarpur, Jullundur and Gurdaspur districts.	1
Central Punjab Land-holders.	The Lahore, Amritsar, Sialkot, Sheikhupura, Ferozepore and Ludhiana districts.	1
North Punjab Land-holders.	The Rawalpindi division and the Gujranwala and Jhang districts.	1
West Punjab Land-holders.	The Montgomery, Lyallpur, Multan, Muzaffargarh and Dera Ghazi Khan districts.	1
Tumandars ..	The Punjab ..	..

ORDERS IN COUNCIL.

X.—LABOUR CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No of seats.
(i) <i>Trade Union.</i>		
Trade Union ..	The North Western Railway Union ..	1
(ii) <i>Non-Union Labour.</i>		
East Punjab ..	The Jullundur, Amritsar and Gurdaspur districts.	1
North Punjab ..	The Jhelum, Rawalpindi and Attock districts ..	1

XI.—UNIVERSITY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
University ..	Non-territorial ..	1

SEVENTH SCHEDULE.

BIHAR CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Caste Seats.	Backward Areas and Tribes Seats
(i) <i>Urban.</i>				
Patna City ..	Patna City municipality, and the area administered by the Patna Administration Committee.	1	—	—
Patna Division ..	The Dinapore cantonment area, and the municipalities in the Patna division (excluding Patna City municipality and the area administered by the Patna Administration Committee).	1	—	—
Tirhut Division ..	The municipalities in the Tirhut Division	1	—	—
Bhagalpur Division ..	The municipalities in the Bhagalpur division.	1	—	—
Chota Nagpur Division.	The municipalities and the notified areas in the Chota Nagpur Division.	1	—	—
(ii) <i>Rural.</i>				
Central Patna ..	Patna City sub division and Patna Sadr sub division (excluding Patna City municipality and the area administered by the Patna Administration Committee) and Hilsa, Ekangar Sarai and Islampur police-stations of Bihar sub-division.	1	—	—
Dinapore ..	Dinapore sub-division (excluding municipal and cantonment areas).	1	—	—
Barh ..	Barh sub-division (excluding municipal areas).	1	—	—

Name of Constituency.	Extent of Constituency.	Number of Seats.	Scheduled castes Seats	Backward areas and Tribes Seats.
	(ii) <i>Rural</i> —contd.			
East Bihar ..	Bihar sub-division (excluding Hilsa Ekangar Sarai and Islampur police-stations and excluding municipal areas).	2	1	—
South Gaya ..	Gaya Sadr sub-division (excluding Tikari, Belaganj and Fatehpur police-stations and excluding municipal areas).	2	1	—
Aurangabad ..	Aurangabad sub-division (excluding municipal areas).	1	—	—
Nawada ..	Nawada sub-division and Fatehpur police-station of Gaya Sadr sub-division.	2	1	—
North Gaya ..	Jahanabad sub-division and Tikari and Belaganj police-stations of Gaya Sadr sub-division (excluding municipal areas).	1	—	—
Buxar ..	Buxar sub-division (excluding municipal areas).	1	—	—
Bhabhua ..	Bhabhua sub-division (excluding municipal areas).	1	—	—
North-East Shahabad ..	Arrah Mufassal, Sandes, Barhara, Shahpur and Jagdishpur police-stations of Shahabad Sadr sub-division (excluding municipal areas).	1	—	—
East Central Shahabad.	Piro and Sahar police-stations of Shahabad Sadr sub-division and Bikramganj and Dinara police-stations of Sasaram sub-division.	2	1	—
Sasaram ..	Karghar, Nokha, Sasaram, Rohtas, Chenar, Dehri and Nasriganj police-stations (excluding municipal areas).	1	—	—
West Saran Sadr ..	Revelganj, Chapra Mufassal, Baniapur, Manjhi and Ekma police-stations (excluding municipal areas).	1	—	—
East Saran Sadr ..	Parsai Sonpur, Dighwara and Garkha police-stations.	1	—	—
North-East Siwan ..	Basantpur, Barharia and Siwan police-stations (excluding municipal areas).	1	—	—
South-West Siwan ..	Maharajgunj, Mairwa, Siswan, Raghunathpur, Darauli and Guthni police-stations.	1	—	—
East Gopalganj <i>cum</i> Mashrak and Mar- haura.	Barauli and Baikunthpur police-stations of Gopalganj sub-division and Marhaura and Mashrak police-stations of Saran Sadr sub-division.	1	—	—
West Gopalganj ..	Mirganj, Bhore, Katea, Kuchaikot and Gopalganj police-stations.	2	1	—
North-West Champaran Sadr.	Motihari, Sugauli, Adapur and Raksaul police-stations (excluding municipal areas).	1	—	—
East Champaran Sadr ..	Dhaka (Ramchandra), Ghorasahan and Madhuban police-stations.	1	—	—
South-West Champaran Sadr.	Kesariya, Pipra and Gobindganj police-stations.	1	—	—

Name of Constituency.	Extent of Constituency.	Number of Seats.	Scheduled castes Seats.	Backward areas and Tribes Seats.
	(ii) <i>Rural</i> —contd.			
South Bettiah ..	Lauriya, Bettiah, Jogapatti, Manjaulia and Sikta police-stations (excluding municipal areas).	1	—	—
North Bettiah ..	Bagaha, Dhanaha, Shikarpur, Ramnagar and Mainatpur police-stations.	2	1	—
East Muzaffarpur Sadr.	Muzaffarpur and Shakra police-stations (excluding municipal areas).	2	1	—
West Muzaffarpur Sadr.	Paru, Sahibganj and Baruraj police-stations.	1	—	—
East Sitamarhi cum Katra and Minapur.	Pupri police-station of Sitamarhi sub-division and Katra and Minapur police-stations of Muzaffarpur Sadr sub-division.	1	—	—
South-West Hajipur ..	Hajipur, Mahnar, Raghapur and Lalganj police stations (excluding municipal areas).	1	—	—
North-East Hajipur ..	Mahua and Patepur police stations ..	1	—	—
North Sitamarhi ..	Sursand, Sitamarhi, Belamooch-Pakani and Sonbarsa (Frontier) police-stations (excluding municipal areas).	1	—	—
West Sitamarhi ..	Sheohar, Bairagnia, Majorganj and Belsand police-stations.	1	—	—
North Madhubani ..	Khajauli, Laukaha, Ladania, Jaynagar, Harlakhi and Madhwapur police-stations.	1	—	—
South Madhubani ..	Madhubani, Phulparas and Jhanjharpur police-stations (excluding municipal areas).	1	—	—
East Madhubani cum Bahera.	Madhaipur police-station of Madhubani sub-division and Bahera police-station of Darbhanga Sadr sub-division.	1	—	—
Darbhangha Sadr ..	Darbhangha and Jale police stations of Darbhanga Sadr sub-division and Benipatti police-station of Madhubani sub-division (excluding municipal areas).	2	1	—
North-West Samastipur	Samastipur, Tajpur and Warisnagar police-stations (excluding municipal areas).	1	—	—
South-East Samastipur	Rusera, Singia, Dalsingsarai and Mohiuddinagar police-stations (excluding municipal areas).	2	1	—
South Sadr Monghyr ..	Monghyr Mufassal, Surajgarha, Lakhi sarai, Kharagpur, Tarapur, Sheikhpura and Barbiga police-stations.	2	1	—
North Sadr Monghyr ..	Gogri, Khagaria, Bakhtiyarpur and Chautham police-stations.	1	—	—
West Begusarai ..	Teghra and Bariarpur police-stations ..	1	—	—
East Begusarai ..	Begusarai and Balia police-stations ..	1	—	—
Jamui ..	Jamui sub-division ..	1	—	—
South Bhagalpur Sadr.	Sultanganj, Shakhund, Bhagalpur Mufassal, Nathnagar, Colgong and Pirpanti police-stations (excluding municipal areas).	1	—	—

Name of Constituency.	Extent of Constituency.	Number of seats.	Scheduled Caste seats.	Backward Areas and Tribes Seats
(ii) <i>Rural</i> —contd.				
North Bhagalpur Sadr <i>cum</i> Kishanganj.	Bihpur and Gopalpur police-stations of Bhagalpur Sadr sub-division and Kishanganj and Sonbarsa police-stations of Madhipura sub-division.	1	—	—
Banka	Banka sub-division ..	1	—	—
Sapaul	Supaul sub-division ..	1	—	—
Madhipura	Madhipura sub-division excluding Kishanganj and Sonbarsa police-stations.	2	1	—
North West Purnea	Araria sub-division (excluding municipal areas).	1	—	—
East Purnea	Kishanganj sub-division and Karandigh, Amaur, Baisi, Kadwa, Barsoi, Azamnagar, Katihar and Manihari police-stations of Purnea Sadr sub-division (excluding municipal areas).	1	—	—
South-West Purnea	Purnea, Kasba, Khazanchi Hat, Dhamdaha, Rupauli, Dharhara, Korha and Barari police-stations of Purnea Sadr sub-division (excluding municipal areas).	2	1	—
Deoghar <i>cum</i> Jamtara.	Deoghar and Jamtara sub-divisions (excluding municipal areas).	1	—	—
Godda	Godda sub-division ..	1	—	—
Santal Parganas Sadr	Sadr or Dumka sub-division (excluding municipal areas).	2	—	1
Pakaur <i>cum</i> Rajmahal.	Pakaur and Rajmahal sub-divisions (excluding municipal areas).	2	—	1
Central Hazaribagh	Hazaribagh Sadr sub-division (excluding municipal areas).	2	—	1
Giridih <i>cum</i> Chatra	Giridih and Chatra sub-divisions (excluding municipal areas).	2	1	—
Ranchi Sadr	Ranchi Sadr sub-division (excluding municipal and notified areas).	2	—	1
Gumla <i>cum</i> Simdega	Gumla and Simdega sub-divisions ..	2	—	1
Khunti	Khunti sub-division ..	1	—	—
North-East Palamau	Daltonganj, Lesliganj, Panki, Chhatrapur, Hariharganj, Patan, Bisrampur, Manatu and Hussainabad police-stations of Palamau Sadr sub-division (excluding municipal areas).	2	1	—
South-West Palamau	Latehar sub-division and Garhwa, Utari, Ranka, Bhandaria and Bhaunathpur police-stations of Palamau Sadr sub-division.	1	—	—
South Manbhum	Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandii, Ichagarh, Barahabhum, Patamda, Banduan, and Manbazar police-stations of Manbhum Sadr sub division (excluding municipal areas).	2	—	1
Central Manbhum	Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandankiari and Kashipur police-stations of Manbhum Sadr sub-division (excluding municipal areas).	2	1	—

Name of Constituency.	Extent of Constituency.	Number of seats.	Schedule Castes Seats.	Backward Areas and Tribes Seats.
	(ii) <i>Rural</i> - conold.			
North Manbhūm	.. Dhanbad sub-division (excluding municipal areas).	1	—	—
Singhbhum	.. Singhbhum district (excluding municipal and notified areas).	3	—	1

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
	(i) <i>Urban</i> .	
Patna City	.. Patna City municipality and the area administered by the Patna Administration Committee.	
Patna Division	.. The Dinapore contonment area and the municipalities in the Patna Division (excluding Patna City Municipality and the area administered by the Patna Administration Committee).	1
Tirhut	.. The Municipalities in the Tirhut Division	1
Bhagalpur Division	.. The Municipalities in the Bhagalpur Division	1
Chota Nagpur	.. The Municipalities and notified areas in the Chota Nagpur Division.	1
	(ii) <i>Rural</i> .	
West Patna	.. Patna City sub-division, and Hilsa, Ekangar Sarai and Islampur police-stations of Bihar sub-division, Dinapore sub-division, and Patna Sadr sub-division (excluding Municipal and cantonment areas and the area administered by the Patna Administration Committee).	1
East Patna	.. Barhi sub-division and Bihar sub-division, excluding Hilsa, Ekangar Sarai and Islampur police-stations and Municipal areas.	1
East Gaya	.. Gaya Sadr and Nawada sub-divisions (excluding municipal areas).	1
West Gaya	.. Jahanabad and Aurangabad sub-divisions (excluding municipal areas).	1
Shahabad	.. Shahabad District (excluding municipal areas)..	1
Saran Sadr	.. Saran Sadr sub-division (excluding municipal areas).	1
Siwan	.. Siwan sub-division (excluding municipal areas)..	1
Gopalganj	.. Gopalganj sub-division	1
North Champaran Sadr.	.. Adapur, Raksaul, Ghorasahan and Dhaka (Ramchandra) police-stations.	1
South Champaran Sadr.	.. Motihari, Sugauli, Kesariya, Pipra Madhuban and Gobindganj police-stations (excluding municipal areas).	1
Bettiah	.. Bettiah sub-division (excluding municipal areas).	1
Muzaffarpur Sadr	.. Muzaffarpur Sadr sub-division (excluding municipal areas).	1
Hajipur	.. Hajipur sub-division (excluding municipal areas).	1
Sitamarhi	.. Sitamarhi sub-division (excluding municipal areas).	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(ii) <i>Rural</i> —contd.		
North East Darbhanga.	Phulparas, Laukaha, Madhainr. Khajauli, Ladania, Jaynagar and Jhanjharpur police stations of Madhubani sub-division.	1
North-West Darbhanga.	Benipatti, Harlakhji, Madhwapur and Madhubani police-stations of Madhubani sub-division and Jale police-station of Darbhanga Sadr sub-division (excluding municipal areas).	1
Central Darbhanga ..	Darbhangha Sadar sub-division, excluding Jale police station and municipal areas.	1
South Darbhanga ..	Samastipur sub-division (excluding municipal areas).	1
North Monghyr ..	Begusarai sub-division and Gogri, Khagaria, Bakhtiyarpur and Chutham police-stations of Monghyr Sadr sub-division.	1
South Monghyr ..	Jamui sub-division and Monghyr Mufassal, Surajgaia, Lakhisarai, Kharagpur, Tarapur, Sheikhpura and Barbigaha police stations of Monghyr Sadr sub-division.	1
Bhagalpur Sadr cum Banka.	Bhagalpur Sadr and Banka sub-divisions (excluding municipal areas).	1
Madhipura cum Supaul.	Madhipura and Supaul sub-divisions.	1
Araria ..	Araria sub-division (excluding municipal areas) ..	1
South Kishanganj ..	Kishanganj and Goal Pokhar police-stations (excluding municipal areas).	1
North-West Kishanganj.	Bahadurganj, Dighalbag and Terhagach police-stations.	1
North East Kishanganj	Islampur, Chopra and Thagurganj police-stations.	1
South-East Purnea Sadr	Katihar, Manihari, Korha, Barari, Kadwa, Barsoi, Azamnagar, and Karandigh police-stations (excluding municipal areas).	1
North Purnea Sadr ..	Purnea, Kasba Khazanchi Hat, Dhamdaha, Rupauli, Dharhara, Amaur and Baisi police-stations (excluding municipal areas).	1
South Santal Parganas ..	Deoghar, Jamtara and Sadr or Dumka sub-divisions (excluding municipal areas).	1
North Santal Parganas.	Godda, Rajmahal and Pakaur sub-divisions (excluding municipal areas).	1
Hazaribagh ..	Hazaribagh district (excluding municipal areas)	1
Ranchi cum Singhbhum	Ranchi and Singhbhum districts (excluding municipal and notified areas).	1
Palamau ..	Palamau district (excluding municipal areas) ..	1
Manbhum ..	Manbhum district (excluding municipal areas) ..	1

III.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>General Urban</i> .		
Patna ..	Patna City municipality and the area administered by the Patna Administration Committee.	1
Muzaffarpur Town ..	Muzaffarpur municipality ..	1
Bhagalpur Town ..	Bhagalpur municipality ..	1
(ii) <i>Muhammadian Urban</i> .		
Patna City ..	Patna City municipality and the area administered by the Patna Administration Committee.	1

ORDERS IN COUNCIL.

IV.—ANGLO-INDIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Anglo-Indian ..	The whole province ..	1

V.—EUROPEAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Patna and Tirhut <i>cum</i> Bhagalpur European.	The Patna, Tirhut and Bhagalpur Divisions ..	1
Chota Nagpur European.	The Chota Nagpur Division ..	1

VI.—INDIAN CHRISTIAN CONSTITUENCY.

Name of Constituency	Extent of Constituency.	No. of seats.
Indian Chistian ..	Non Territorial ..	1

VII.—COMMERCE, INDUSTRY, MINING AND PLANTING CONSTITUENCIES.

Name of Constituency.	No. of seats.
The Bihar Chamber of Commerce ..	1
The Bihar Planters' Association ..	1
The Indian Mining Association ..	1
The Indian Mining Federation ..	1

VIII.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Patna Division Land holders.	The Patna division ..	1
Tirhut Division Land-holders.	The Tirhut division ..	1
Bhagalpur Division Landholders.	The Bhagalpur division ..	1
Chota Nagpur Division Landholders.	The Chota Nagpur division ..	1

IX.—LABOUR CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Trade Union.</i>		
Trade Union (Mining).	Registered mining unions operating in the Dhanbad sub-division.	1
(ii) <i>Non-Union Labour</i>		
Jamshedpur Factory Labour.	Jamshedpur and Jugsalai notified areas and Maniza Maubbandar (thana No. 86, police station Ghatsila).	1
Monghyr cum Jamalpur Factory Labour.	Monghyr and Jamalpur municipalities	1
Hazaribagh Mining Labour	Ramgarh, Gola, Kodarma, Jainagar, Gumia, Mandu, Gawan, Satgawan, Giridih, Bengabad, Gande, and Bermo police stations.	1

X.—UNIVERSITY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
University	Non-territorial	1

EIGHTH SCHEDULE.

THE CENTRAL PROVINCES AND BEAR CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Castes Seats.
(i) <i>Urban.</i>			
Nagpur City	The Nagpur and Kamptee municipalities and the Kamptee cantonment.	2	1
Nagpur-Bhandara	The Umrer, Katol, Bhandara, Gondia, Tumsar, Paoni and Pandhurna municipalities and the railway settlement at Gondia.	1	—
Chanda-Wardha	The Chanda, Wardha, Arvi and Hinganghat municipalities.	1	—
Jubbulpore City	The Jubbulpore municipality, the Jubbulpore cantonment and the Government Gun Carriage Factory Estate at Jubbulpore.	1	—
Jubbulpore-Saugor-Seoni	The Murwara, Saugor, Damoh, Bina-Etawah, Mandla and Seoni municipalities, the Saugor cantonment and the railway settlements at Bina and Seoni.	1	—
Hoshangabad-Nimar-Chhindwara.	The Hoshangabad, Itarsi, Harda, Narsingpur, Khandwa, Burhanpur and Chhindwara municipalities and the railway settlements at Harda and Chhindwara.	1	—

Name of Constituency.	Extent of Constituency.	No. of Seats.	Scheduled Castes Seats.
Raipur-Bilaspur-Drug	The Raipur, Dhamtari, Bilaspur and Drug municipalities and the railway settlements at Raipur, Dhamtari and Bilaspur.	1	—
East Berar	The Amraoti Town, Amraoti Camp, Ellichpur City, Ellichpur Civil Station, Anjangaon, Yeotmal and Wun municipalities.	1	—
West Berar	The Akola, Akot, Murtizapur, Keranja, Balapur, Basim, Malkapur, Nandura, Khamgaon, Shegaon and Jalgaon municipalities	1	—
(ii) Rural.			
Nagpur-Umrer.	The Nagpur and Umrertahsils, excluding the area included in urban constituencies.	2	1
Katol-Saoner	The Katol and Saoner tahsils, excluding the area included in urban constituencies.	1	—
Ramtek	The Ramtek tahsil	1	—
Arvi	The Arvi tahsil, excluding the area included in urban constituencies.	1	—
Hinganghat-Wardha	The Hinganghat and Wardha tahsils, excluding the area included in urban constituencies.	2	1
Chanda-Brahmapuri	The Chanda and Brahmapuri tahsils, excluding the area included in urban constituencies.	2	1
Warora	The Warora tahsil	1	—
Sironcha-Garchiroli	The Sironcha and Garchiroli tahsils	1	—
Betul-Bhainsdehi	The Betul and Bhainsdehi tahsils	1	—
Multai	The Multai tahsil	1	—
Chhindwara-Sausar	The Chhindwara and Sausar tahsils, excluding the area included in urban constituencies.	2	1
Seoni	The Seoni tahsil, excluding the area included in urban constituencies.	1	—
Amarwara-Lakhnadon	The Amarwara and Lakhnadon tahsils	1	—
Jubbulpore Patan	The Jubbulpore and Patan tahsils, excluding the area included in urban constituencies.	2	1
Sehora	The Sehora tahsil	1	—
Murwara	The Murwara tahsil, excluding the area included in urban constituencies.	1	—
Saugor Khurai	The Saugor and Khurai tahsils, excluding the area included in urban constituencies	2	1
Rehli-Banda	The Rehli and Banda tahsils	1	—
Damoh-Hatta	The Damoh and Hatta tahsils, excluding the area included in urban constituencies.	2	1
Mandla	The Mandla tahsil, excluding the area included in urban constituencies.	1	—
Niwas-Dindori	The Niwas and Dindori tahsils	1	—
Hoshangabad Sohagpur.	The Hoshangabad and Sohagpur tahsils excluding the area included in urban constituencies.	1	—
Harda-Seoni-Malwa	The Harda and Seoni-Malwa tahsils, excluding the area included in urban constituencies.	1	—
Narsinghpur-Gadarwara	The Narsinghpur and Gadgarwara tahsils, excluding the area included in urban constituencies.	2	1
Khandwa	The Khandwa tahsil, excluding the area included in urban constituencies.	1	—
Burhanpur Harsud	The Burhanpur and Harsud tahsils, excluding the area included in urban constituencies.	1	—
Raipur	The Raipur tahsil, excluding the area included in urban constituencies.	2	1

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Castes Seats.
(ii) <i>Rural</i> —contd.			
Dhamtari ..	The Dhamtari tahsil, excluding the area included in urban constituencies.	1	—
Baloda Bazar ..	The Baloda Bazar Tahsil ..	2	1
Mahasamund ..	The Mahasamund tahsil ..	1	—
Bilaspur ..	The Bilaspur tahsil, excluding Pendra and Kenda Zamindaries and the area included in urban constituencies.	2	1
Mungeli ..	The Mungeli tahsil ..	2	1
Katghora ..	The Katghora tahsil and Pendra, Kenda and Champa Zamindaries ..	1	—
Janjgir ..	The Janjgir tahsil, excluding Champa Zamin-dari ..	2	1
Drug ..	The Drug tahsil, excluding the area included in urban constituencies.	2	1
Bemetara ..	The Bemetara tahsil ..	1	—
Sanjari ..	The Sanjari tahsil ..	1	—
Balaghat-Baihar ..	The Balaghat and Baihar tahsils ..	1	—
Waraseoni ..	The Waraseoni tahsil ..	1	—
Bhandara-Sakoli ..	The Bhandara and Sakoli tahsils, excluding the area included in urban constituencies	2	1
Gondia ..	The Gondia tahsil, excluding the area included in urban constituencies.	1	—
Chandur ..	The Chandur taluq ..	1	—
Morsi ..	The Morsi taluq ..	1	—
Amraoti ..	The Amraoti taluq, excluding the area included in urban constituencies.	1	—
Ellichpur-Daryapur-Melghat.	The Ellichpur, Daryapur and Melghat taluqs, excluding the area included in urban constituencies.	2	1
Akola-Balapur ..	The Akola and Balapur taluqs, excluding the area included in urban constituencies.	2	1
Akot ..	The Akot taluq, excluding the area included in urban constituencies.	1	—
Murtizapur-Mangrulpir.	The Murtizapur and Mangrulpir taluqs, excluding the area included in urban constituencies.	1	—
Basim ..	The Basim taluq, excluding the area included in urban constituencies.	1	—
Yeotmal-Darwha ..	The Yeotmal and Darwha taluqs, excluding the area included in urban constituencies.	2	1
Pusad ..	The Pusad taluq ..	1	—
Kelapur-Wun ..	The Kelapur and Wun taluqs, excluding the area included in urban constituencies.	1	—
Chikhli-Mehkar ..	The Chikhli and Mehkar taluqs ..	2	1
Malkapur ..	The Malkapur taluq, excluding the area included in urban constituencies.	1	—
Khamgaon-Jalgaon ..	The Khamgaon and Jalgaon taluqs, excluding the area included in urban constituencies.	1	—

II.—MUHAMMADAN CONSTITUENCIES

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> .		
East Berar ..	The Amraoti Town, Amraoti Camp, Ellichpur City, Ellichpur Civil Station, Anjangaon, Yeotmal and Wun municipalities.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> —contd.		
West Berar ..	The Akola, Akot, Balapur, Murtizapur, Karanja, Basim, Malkapur, Nandura, Khamgaon, Shegaon and Jalgaon municipalities.	1
(ii) <i>Rural</i> .		
Nagpur ..	The whole of the Nagpur district ..	1
Wardha-Chanda ..	The whole of the Wardha and Chanda districts ..	1
Hoshangabad - Chhindwara-Betul.	The whole of the Hoshangabad district, excluding the Narsinghpur sub-division, the whole of the Chhindwara district, excluding the Seoni sub-division and the whole of the Betul district.	1
Jubbulpore-Mandla ..	The whole of the Jubbulpore and Mandla districts ..	1
Saugor-Narsinghpur ..	The whole of the Saugor district and the Narsinghpur sub-division.	1
Nimar ..	The whole of the Nimar district ..	1
Raipur-Bilaspur-Drug ..	The whole of the Raipur, Bilaspur and Drug districts.	1
Bhandara BalaghatSeoni	The whole of the Balaghat and Bhandara districts and the Seoni sub-division.	1
Amraoti ..	The Amraoti district, excluding the area included in urban constituencies.	1
Akola ..	The Akola district, excluding the area included in urban constituencies.	1
Yeotmal ..	The Yeotmal district, excluding the area included in urban constituencies.	1
Buldana ..	The Buldana district, excluding the area included in urban constituencies.	1

III.—WOMEN'S CONSTITUENCIES, URBAN (GENERAL).

Name of Constituency.	Extent of Constituency.	No. of seats.
Nagpur City ..	The Nagpur municipality ..	1
Jubbulpore ..	The Jubbulpore municipality and the Jubbulpore cantonment.	1
Amraoti-Akola ..	The Amraoti Town, Amraoti Camp and Akola municipalities.	1

IV.—ANGLO-INDIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Anglo-Indian ..	The Central Provinces and Berar ..	1

V.—EUROPEAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
European ..	The Central Provinces and Berar ..	1

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VI.—BACKWARD AREAS AND TRIBES CONSTITUENCY.

Name of Constituency.	Extent of Constituency	No. of seats.
Backward tribes ..	The Seoni tahsil of the Chhindwara district and the Mandla tahsil of the Mandla district.	1

VII.—COMMERCE CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Central Provinces Commerce.	The Province, exclusive of Berar ..	1
Berar Commerce ..	Berar ..	1

VIII.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Central Provinces, Northern Landholders	The Jubbulpore division and the districts of Chhindwara and Betul.	1
Central Provinces, Southern Landholders	The Nagpur division, excluding the districts of Chhindwara and Betul and the Chhattisgarh division.	1
Berar Landholders ..	The Berar division ..	1

IX.—LABOUR CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Trade Union labour ..	(i) <i>Trade Union.</i> The Nagpur Municipality ..	1
Factory labour ..	(ii) <i>Factory Labour.</i> The Jubbulpore and Murwara municipalities; the Jubbulpore Cantonment; the revenue mauza of Polipathar, Settlement No. 164, and the revenue mauza of Ghana, Settlement No. 634, in the Jubbulpore tahsil of the Jubbulpore district; the revenue mauza of Tikuri, Settlement No. 188, the revenue mauza of Burgawan, Settlement No. 29, the revenue mauza of Mehgaon, Settlement No. 519, and the revenue mauza of Koilia, Settlement No. 282, in the Murwara tahsil of the Jubbulpore district.	1

X.—UNIVERSITY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
University ..	Non-territorial ..	1 ..

NINTH SCHEDULE.

ASSAM CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled castes seats.
Dhubri (Central) ..	Bilasipara and Gossangaon thanas ..	1	—
Dhubri (South) ..	Dhubri, Golakganj, South Salmara and Mankachar thanas <i>plus</i> the following three plains mauzas in the Garo Hills district, <i>viz.</i> , Mahendreganj, Rangapani and Fulbari.	1	—
Dhubri (North) ..	Bijni and Kokrajhar thanas ..	1	—
Goalpara (North-West) ..	Lakhipur and North Salmara thanas ..	1	—
Goalpara (South-East) ..	Goalpara and Dudnai thanas ..	1	—
Barpeta (South) ..	Barpeta and Tarabari thanas ..	1	—
Barpeta (North) ..	orbhog and Patacharkuchi thanas ..	1	—
Nalbari ..	Nalbari thana ..	1	—
Kamrup Sadr (North) ..	Rangia and Barama thanas ..	1	—
Kamrup Sadr (Central) ..	Kamalpur and Hajo thanas ..	1	—
Kamrup Sadr (South) ..	Gauhati, Palasbari, Chhaygaon and Boko thanas.	3	1
Mangaldai (South) ..	Mangaldai and Dalgaon thanas ..	1	—
Mangaldai (North) ..	Kalaigaon, Paneri, Udalguri and Majhat thanas.	1	—
Tezpur (West) ..	Tezpur and Dhekiajuli thanas ..	1	—
Tezpur (East) ..	Soota, Behali and Golpur thanas ..	1	—
Nowgong (West) ..	Lahorighat, Dhing and Marigaon thanas (excluding all areas in the Mikir Hills) <i>plus</i> Juria mauza from Rupali Hat thana.	1	—
Nowgong (South-East) ..	Raha and Jamunamukh thanas (excluding all areas in the Mikir Hills) <i>plus</i> the Lumding Kheraj Block	1	—
Nowgong (North-East) ..	Nowgong, Kalabor and Samaguri thanas (excluding all areas in the Mikir Hills) <i>plus</i> Rupali Hat thana <i>less</i> Juria mauza.	2	1
Golaghat (North) ..	Dergaon and Bokakhat thanas (excluding all areas in the Mikir Hills) <i>plus</i> Mahura and Khumtai mauzas from Golaghat thana.	1	—
Golaghat (South) ..	Golaghat thana (excluding all areas in the Mikir Hills except Barpathar and Sarupathar mauzas) <i>less</i> Mahura and Khumtai mauzas.	1	—
Jorhat (South) ..	Titabar and Teok thanas ..	1	—
Jorhat (North) ..	Jorhat and Majuli thanas ..	2	1
Sibsagar (West) ..	Sibsagar and Anguri thanas excluding the portion of Dopdar Mauza in Anguri thana.	1	—
Sibsagar (East) ..	Nazira and Sonari thanas <i>plus</i> the portion of Dopdar Mauza in Anguri thana.	1	—
Dibrugarh (Central) ..	Tinsukia, Bardubi and Jaipur thanas ..	1	—
Dibrugarh (West) ..	Dibrugarh, Moran and Dhemaji thanas ..	1	—
Dibrugarh (East) ..	Doom Dooma, Digboi and Margherita thanas (excluding the Lakhimpur Frontier Tract).	1	—
North Lakhimpur ..	The whole of North Lakhimpur sub-division..	1	—

Name of Constituency.	Extent of Constituency.	No. of seats.	Scheduled Castes seats.
Sunamganj ..	The whole of Sunamganj sub-division ..	2	1
Habiganj (North) ..	Lakhai, Nabiganj, Baniyachung and Ajmiriganj thanas.	2	1
Habiganj (South) ..	Habiganj, Madhabpur, Chunarighat and Bahubal thanas.	1	—
South Sylhet (West) ..	Maulvi Bazar Srimangal and Kamalganj thanas.	1	—
South Sylhet (East) ..	Kulaura and Rajnagar thanas ..	1	—
Sylhet Sadr (South) ..	Fenchuganj, Golabganj, Balaganj and Biswanath thanas.	1	—
Sylhet Sadr (North) ..	Sylhet, Gowainghat, Kanairghat and Jaintiapur thanas.	1	—
Karimganj (West) ..	Jaldhup and Patharkandi thanas ..	1	—
Karimganj (East) ..	Karimganj, Badarpur and Ratabari thanas ..	2	1
Hailakandi ..	The whole of Hailakandi sub-division ..	1	—
Silchar ..	The whole of Silchar sub-division ..	2	1

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Dhubri (West) ..	Dhubri and Golakganj thanas ..	1
Dhubri (South) ..	South Salmara and Mankachar thanas <i>plus</i> the following three plains mauzas of the Garo Hills district, <i>viz.</i> , Mahendraganj, Rangapani and Fulbari.	
Dhubri (North) ..	Bilasipara, Kokrajhar, Gossaingaon and Bijni thanas.	1
Goalpara (West) ..	Lakhipur thana ..	1
Goalpara (East) ..	Goalpara Dudnai and North Salmara thanas ..	1
Barpeta ..	Barpeta and Tarabari thanas ..	1
Kamrup (South) ..	Gauhati, Palasbari, Chhaygaon, Boko, Kamalpur and Hajo thanas ..	1
Kamrup (North) ..	Nalbari, Rangia and Barama thanas of the Kamrup Sadr sub-division and Sorbhog and Patacharkuchi thanas of the Barpeta sub-division.	1
Nowgong (West) ..	Dhing, Lahorrigat, Raha, Marigaon and Jamunamukh thanas (excluding all areas in the Mikir Hills) <i>plus</i> the Lumding Kheraj Block.	1
Nowgong (East) ..	Nowgong, Samaguri, Rupahi Hat and Kaliabor thanas (excluding all areas within the Mikir Hills).	1
Darrang ..	The whole of Darrang district ..	1
Sibsagar ..	The whole of Sibsagar district (excluding all areas in the Mikir Hills except Barpathar and Sarupathar mauzas).	1
Lakhimpur ..	The whole of Lakhimpur district (excluding the Lakhimpur, Frontier Tract).	1
Sunamganj (West) ..	Tahirpur, Dharampasha and Sulla thanas ..	1
Sunamganj (Central) ..	Sunamganj thana ..	1
Sunamganj (East) ..	Chhatak thana ..	1
Sunamganj (South) ..	Deraï and Jagannathpur thanas ..	1

Name of Constituency.	Extent of Constituency.	No. of seats.
Habiganj (North-West).	Baniyachung and Ajmiriganj thanas ..	1
Habiganj (North-East).	Habiganj and Nabiganj thanas ..	1
Habiganj (South-West).	Lakhai and Madhabpur thanas ..	1
Habiganj (South-East).	Chunarighat and Bahubal thanas ..	1
South Sylhet (West) ..	Maulvi Bazar and Srimangal thanas ..	1
South Sylhet (Central).	Rajnagar and Kamalganj thanas ..	1
South Sylhet (East) ..	Kulaura thana ..	1
Sylhet Sadr (Central) ..	Part of Sylhet Sadr thana containing Chaukidari Circles Nos. 1—41 and 51—55 (inclusive) including the Municipal area.	1
Sylhet Sadr (North) ..	Gowainghat and Jaintiapur thanas <i>plus</i> the North Eastern half of Kanaighat thana containing Chaukidari Circles Nos. 1—12, 15—20 and 32—34 (inclusive).	1
Sylhet Sadr (West) ..	Part of Sylhet Sadr thana containing Chaukidari Circles Nos. 42—50 and 56—67 (inclusive) and Biswanath thana.	1
Sylhet Sadr (East) ..	Golabganj thana <i>plus</i> the South Western half of Kanaighat thana containing Chaukidari Circles Nos. 13, 14 and 21—31 (inclusive).	1
Sylhet Sadr (South) ..	Balaganj and Fenchuganj thanas ..	1
Karimganj (West) ..	Jaldhup thana ..	1
Karimganj (Central) ..	Karimganj thana <i>less</i> Chaukidari Circles Nos. 22—28 (inclusive), 61, 62 and 64—68 (inclusive).	1
Karimganj (South) ..	Badarpur, Ratabari and Patharkandi thanas <i>plus</i> the following Chaukidari Circles of Karimganj thana:—Nos. 22—28 (inclusive), 61, 62 and 64—68 (inclusive).	1
Haslakandi ..	The whole of Haslakandi sub-division ..	1
Silchar ..	The whole of Silchar sub-division ..	1

III.—WOMEN'S CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Women's (Shillong) ..	Shillong Municipality and Cantonment ..	1

IV.—EUROPEAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
European ..	The districts of Goalpara, Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur (excluding the Lakhimpur Frontier Tract), Sylhet, Cachar (excluding the North Cachar Hills), the Garo Hills and the British territory of the Khasi and Jaintia Hills.	1

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V.—INDIAN CHRISTIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Indian Christian ..	The district of Goalpara, Kamrup, Nowgong (excluding all areas in the Mikir Hills except the Lumding Kheraj Block), Darrang, Sibsagar (excluding all areas in the Mikir Hills except Barpathar and Sarupathar mauzas), Lakhimpur (excluding the Lakhimpur Frontier Tract), Sylhet and Cachar (excluding the North Cachar Hills).	1

VI.—BACKWARD TRIBAL (PLAIN) CONSTITUENCIES.

Name of Constituency	Extent of Constituency.	No. of seats.
Goalpara (Tribal) ..	Kokrajhar and Bijni thanas of Goalpara district ..	1
Kamrup (Tribal) ..	Nalbari, Barama, Rangia, Patacharkuchi and Sorbhog thanas of Kamrup district	1
Lakhimpur and Majuli (Tribal).	North Lakhimpur sub-division of the Lakhimpur district <i>plus</i> the Majuli thana of the Jorhat sub-division of the Sibsagar district <i>plus</i> the Dhemaji thana of the Dibrugarh sub-division of the Lakhimpur district.	1
Nowgong (Tribal) ..	Raha, Marigaon and Jamunomukh thanas excluding all areas in the Mikir Hills.	1

VII.—BACKWARD AREAS (HILLS) CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Garo Hills (North) ..	Mauzas III, IV and V ..	1
Garo Hills (South) ..	Mauzas I, II, IX and X (Tura town) ..	1
Shillong ..	The British territory of the Shillong sub-division <i>plus</i> the non-British areas in which the Municipality and Cantonment exercise jurisdiction.	1
Jowai ..	The whole of Jowai sub-division ..	1
Mikir Hills ..	The Mikir Hills (in Nowgong and Sibsagar districts) <i>less</i> Barpathar and Sarupathar mauzas in Golaghat sub-division and <i>less</i> the Lumding Kheraj Block in Nowgong district.	1

VIII.—PLANTING CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
European Planting ..	The districts of Goalpara, Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur (excluding the Lakhimpur Frontier Tract), Sylhet and Cachar (excluding the North Cachar Hills).	7
Indian Planting (Assam Valley).	The districts of Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur (excluding the Lakhimpur Frontier Tract).	1

Name of Constituency.	Extent of Constituency	No. of seats.
Indian Planting (Surma Valley).	The districts of Sylhet and Cachar (excluding the North Cachar Hills).	1

IX.—COMMERCE AND INDUSTRY CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
European Commerce and Industry.	The Province	1
Indian Commerce and Industry	Ditto	1

X.—LABOUR CONSTITUENCIES (TEA GARDENS).

Name of Constituency.	Extent of Constituency.	No. of seats.	
I.—IN THE LAKHIMPUR DISTRICT.			
First election.			
Doom Dooma .. (District Lakhimpur).	All gardens within a radius of three and a half miles from Doom Dooma police station.	1	
Second election.			
Tinsukia .. (District Lakhimpur)	All gardens within a radius of five miles from Tinsukia police station.		
Third election.			
Dibrugarh .. (District Lakhimpur).	All gardens within a radius of six miles from Dibrugarh police station.	1	
II.—IN THE SIBSAGAR DISTRICT			
First election.			
Jorhat .. (Sibsagar District)	All gardens in Jorhat thana within the area included in the following boundaries:— North—Assam Trunk Road; West—Jorhat Provincial Railway, Titabar Branch; East—Thana boundary; South—Thana boundary.	1	
Second election.			
Nazira .. (Sibsagar District).	All gardens within Nazira thana which are within a radius of seven miles from Simalguri railway station.		
Third election.			
Golaghat East .. (Sibsagar District.)	All gardens, within the mauzas of Dergaon, Gurjagonia, Kakodonga, Dakhinhengra, Kacharihat, Athgaon and Ghiladhari.		

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Name of Constituency.	Extent of Constituency.	No. of seats.
III.—IN THE DARRANG DISTRICT.		
	<i>First election.</i>	
Thakurbari (Darrang District).	All gardens within a radius of three and a half miles from Thakurbari railway station.	1
	<i>Second election.</i>	
Biswanath (Darrang District).	All gardens within a radius of six miles from Pabhoi inspection bungalow.	
	<i>Third election.</i>	
Paneri (Darrang District).	All gardens within a radius of seven miles from Paneri club house.	
IV.—IN THE SURMA VALLEY.		
	<i>First election.</i>	
Silchar (District Cachar).	All gardens in the Silchar Thana which lie south of the Barak river.	1
	<i>Second election.</i>	
Srimangal (District Sylhet).	All gardens within the jurisdiction of the Srimangal Police-station.	
	<i>Third election.</i>	
Longai Valley (District Sylhet).	All gardens in the Longai Valley within the jurisdiction of the Patharkendi police-station.	

TENTH SCHEDULE.

THE NORTH-WEST FRONTIER PROVINCE CONSTITUENCIES.
I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban.</i>		
Peshawar Cantonment.	Peshawar cantonment and Nowshera cantonment.	1
Bannu Town ..	Bannu municipality and cantonment ..	1
Dera Ismail Khan Town.	Dera Ismail Khan municipality and cantonment ..	1
(ii) <i>Rural.</i>		
Peshawar West ..	Peshawar municipality, Peshawar tahsil (excluding Peshawar cantonment), and Charsadda tahsil.	1
Peshawar East ..	Nowshera tahsil (excluding Nowshera cantonment), Mardan tahsil and Swabi tahsil.	1
Hazara ..	Hazara district ..	1
Kohat ..	Kohat district ..	1
Bannu ..	Bannu district (excluding the Bannu municipality and cantonment).	1
Dera Ismail Khan ..	Dera Ismail Khan district (excluding the Dera Ismail Khan municipality and cantonment).	1
II.—MUHAMMADAN CONSTITUENCIES.		
(i) <i>Urban.</i>		
Peshawar City ..	Peshawar municipality and the cantonments of Peshawar, Risalpur, Nowshera, Mardan and Cherat.	2
N. W. F. P. Towns ..	Kohat, Bannu, Dera Ismail Khan and Abbottabad municipalities and cantonments.	1

Name of Constituency.	Extent of Constituency.	No. of seats.
	(ii) <i>Rural.</i>	
Tanawal	.. Tanawal circle and those parts of Rash and Dhangar circles which lie west of the Hazara Trunk Road.	1
Abbottabad West	.. Nara circle and those parts of Rash and Dhangar circles which lie East of the Hazara Trunk Road	1
Abbottabad East	.. Boi, Bakot and Lora circles	1
Haripur North	.. Khari, Badhnak, Gandgar and Abi II circles	1
Haripur Central	.. Abi I and Maira circles	1
Haripur South	.. Dhaka, Khanpur and Kandi circles	1
Mansehra North	.. Kaghan and Kunhar circles and that part of Pakhli Kandi which lies East of the Khaki-Giddarpur Road.	1
Upper Pakhli	.. Konsh-Bhogarmang circle and that part of Maidan Pakhli circle which lies East of the Siran River.	1
Lower Pakhli	.. Agror and Pakhli Gerhian circles and those parts of Maidan Pakhli and Pakhli Kandi circles which lie West of the Siran River and the Khaki Giddarpur road, respectively.	1
Bara Mohmands	.. Bara Mohmands and that part of Khalsa which lies south of Grand Trunk Road	1
Khalils	.. Khalils and that part of Khalsa which lies north of Grand Trunk Road.	1
Hashtnagar North	.. District Board Circles Nos. 9 and 10 of the Peshawar District.	1
Hashtnagar South	.. District Board Circles Nos. 11, 12 and 13 of the Peshawar district.	1
Doaba-Daudzai	.. District Board Circles Nos. 1, 14 and 15 of the Peshawar district.	1
Nowshera South	.. District Board Circles Nos. 17, 18 and 19 of the Peshawar district.	1
Nowshera North	.. District Board Circles Nos. 16 and 20 of the Peshawar district.	1
Baizai	.. District Board Circles Nos. 29, 30 and 31 of the Peshawar district.	1
Kamalzai	.. District Board Circles Nos. 32, 34 and 35 of the Peshawar district	1
Utmannama	.. Utmannama Circle	1
Razzar	.. Southern Razzar and Bulaqnama	1
Amazai	.. Amazai, Sndhum, and Northern Razzar	1
Hangu	.. Whole of Hangu tahsil and Marai Bala District Board Circle No. 1 of the Kohat tahsil which adjoins the Hangu tahsil.	1
Kohat	.. Whole of Kohat tahsil excluding Marai Bala District Board Circle.	1
Teri South	.. Latambar, Jandrai and Sarki District Board Circle.	1
Teri North	.. Kandar, Umar Khan Killi and Kandi District Board Circles.	1
Bannu East	.. Wazir and Tarkha circles, and that part of Bannu circle which lies East of the Kurram Garhi-Bannu-Dera Ismail Khan road.	1
Bannu West	.. Western Wazir, Lohra and Nar-Landidak circles, and that part of Bannu circle which lies West of the Kurram Garhi-Bannu-Dera Ismail Khan road.	1
Lakki East	.. Shiga circle and those parts of Tandoba and Nar circles which lie East of the Bannu-Dera Ismail Khan road.	1

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Name of Constituency.	Extent of Constituency.	No. of seats.
Lakki West ..	Pakha and Gadwad circles and those parts of Tandoba and Nar circles which lie West of the Bannu-Dera Ismail Khan road.	1
Tank ..	Tank tahsil ..	1
Kulachi ..	Kulachi tahsil ..	1
Dera Ismail Khan South	The following zails in Dera Ismail Khan Tahsil: Dera Ghakan, Shero Kohna, Mapal, Khiyara, Gom'a, Parao, Miran, Tikan and Basti Ali.	1
Dera Ismail Khan North	The following zails in Dera Ismail Khan Tahsil: Yarik, Kotjai, Paharpur, Kurar and Pota; and Paniala and Kirri Khaisor tracts.	1

III.—SIKIH CONSTITUENCIES, RURAL.

Name of Constituency.	Extent of Constituency.	No. of seats.
Southern Districts ..	Kohat, Bannu and Dera Ismail Khan districts.	1
Peshawar ..	Peshawar, Charsadda and Nowshera tahsils of the Peshawar district.	1
Hazara Mardan ..	Hazara district and the Mardan and Swabi tahsils of the Peshawar district.	1

IV.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Peshawar Landholders.	Peshawar district ..	1
North-West Frontier Province Landholders.	Hazara, Kohat, Bannu and Dera Ismail Khan districts.	1

ELEVENTH SCHEDULE.

ORISSA CONSTITUENCIES.
I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	Number of seats.	Scheduled Castes seats.
West Cuttack Sadr ..	Banki, Baideswar and Gobindpur police stations.	1	—
Central Cuttack Sadr ..	Cuttack town and Cuttack Sadr police-stations.	1	—
North Cuttack Sadr ..	Salepur, Mahanga, Kishannagar and Tangi police-stations.	2	1

Name of Constituency.	Extent of Constituency.	Number of seats.	Scheduled Castes seats.
East Cuttack Sadr ..	Tirtol and Ersama police-stations ..	1	—
South Cuttack Sadr ..	Jagatsinghpur and Balikuda police-stations ..	1	—
Central Kendrapara ..	Kendrapara police-station ..	1	—
North Kendrapara ..	Patamundai and Aul police-stations ..	1	—
East Kendrapara ..	Patkura, Mahakalpara and Rajnagar police-stations.	1	—
East Jajpur ..	Jajpur and Binjarpur police-stations ..	2	1
West Jajpur ..	Dharamshala and Barchana police-stations ..	1	—
North Jajpur ..	Sukinda and Korai police-stations ..	1	—
Angul district ..	Angul district ..	1	—
East Puri Sadr ..	Gop, Kakatpur and Nimapara police-stations ..	1	—
South Puri Sadr ..	Puri Town, Puri Sadr, Bramhagiri and Ktish-naprasad police-stations.	1	—
North Puri Sadr ..	Pipli, Balanta, Delang, Balipatna and Satyabadi police-stations.	2	1
East Khurda ..	Khurda, Jatni, Bhubaneswar and Chandka police-stations.	1	—
West Khurda ..	Bolgarh, Begunia, Banpur and Tangi police-stations.	1	—
Central Balasore Sadr ..	Balasore, Remna and Basta police-stations ..	1	—
South Balasore Sadr ..	Soro, Khaira and Simulia police-stations ..	1	—
North Balasore Sadr ..	Balipal, Bhograi, Jellasore and Singla police-stations.	1	—
East Bhadrak ..	Basudebpur and Chandbali police-stations ..	1	—
West Bhadrak ..	Bhadrak, Bantli, Dhamnagar and Bhandarpukhuri police-stations.	2	1
Sambalpur Sadr ..	Sambalpur Sadr sub-division ..	2	—
West Bargarh ..	Paikmal, Padampur, Bijepur, Jagdalpur, Gaisilatt and Melchhamunda police-stations	1	—
East Bargarh ..	Bargarh, Attabira, Sohela, Ambabhona, Bheran, Barpali and Bhatli police-stations.	2	1
Khariar ..	Nawapara sub-division ..	1	—
Ghumsur ..	Ghumsur taluk ..	1	—
Kudala ..	Kudala taluk ..	1	—
Chatrapur ..	Chatrapur taluk ..	1	—
Aska-Surada ..	Aska and Surada taluks (including Pandakhole agency).	2	1
Berhampur ..	Berhampur taluk ..	3	—
Balliguda-Khondmals ..	Khondmals District and Balliguda and G. Udayagiri taluks.	1	—
Parlakimedi ..	Parlakimedi taluk ..	1	—
Naurangpur ..	Naurangpur taluk ..	1	—
Jeypore-Malkangiri ..	Jeypore and Malkangiri taluks ..	1	—
Koraput ..	Koraput, Pottangi, Rayagada, Bissam Cuttack and Gunupur taluks.	1	—

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Cuttack Sadr ..	Cuttack Sadr sub-division including Banki ..	1
North Cuttack cum Angul.	Kendrapara and Jajpur sub-divisions and Angul-district.	1
Balasore cum Sambalpur ..	The districts of Balasore and Sambalpur ..	1
South Orissa ..	The districts of Puri, Khondmals, Ganjam and Koraput.	1

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III.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Cuttack Town ..	Cuttack municipality ..	1
Berhampur Town ..	Berhampur municipality ..	1

IV.—INDIAN CHRISTIAN CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats
Orissa Indian Christian.	Pipli police-station and the municipal areas of Cuttack, Balasore, Sambalpur and Berhampur Towns.	1

V.—COMMERCE AND INDUSTRY CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Orissa Commerce and Industry.	The whole Province ..	1

VI.—LANDHOLDERS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
East Orissa Landholders.	The districts of Cuttack, Angul and Balasore ..	1
West Orissa Landholders.	The district of Puri, Sambalpur, Khondmals, Ganjam and Koraput.	1

VII.—LABOUR CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Orissa Labour Constituency.	The whole Province	1

TWELFTH SCHEDULE.

SIND CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> .		
Karachi City North ..	Municipal Wards Nos. I, II, IV and V of the City of Karachi.	1
Karachi City South ..	Municipal Wards Nos. III, VI, VII and VIII of the City of Karachi and the cantonments of Karachi and Manora and the limits of the Karachi Port Trust.	1
Hyderabad City ..	Municipal Wards Nos. II, III, IV, V and VI of the municipal borough of Hyderabad.	1
(ii) <i>Rural</i> .		
Karachi District ..	The district of Karachi (excluding the municipal limits of the City of Karachi, the cantonments of Karachi and Manora and the limits of the Karachi Port Trust).	1
Dadu District ..	The district of Dadu ..	1
Larkana District ..	The district of Larkana ..	1
Upper Sind Frontier District.	The district of Upper Sind Frontier ..	1
Sukkur West ..	Shikarpur and Garhi Yasin talukas of the Sukkur district.	1
Sukkur Central ..	Sukkur taluka of the Sukkur district ..	1
Sukkur East ..	Rohri, Pano Akil, Ghotki, Mirpur Mathelo and Ubauro talukas of the Sukkur district.	1
Nawabshah North ..	Kandiario, Naushahro, Moro and Nawabshah talukas of the Nawabshah district.	1
Nawabshah South ..	Sakrand, Sinjhor, Moro and Shahdapur talukas of the Nawabshah district.	1
Hyderabad Suburbs and Taluka.	Hyderabad taluka (excluding Municipal Wards Nos. II, III, IV, V and VI of the municipal borough of Hyderabad.	1
Hyderabad North ..	Hala, Tando Allahyar and Dero Mohbat talukas of the Hyderabad district	1
Hyderabad South ..	Guni, Tando Bago and Badin talukas of the Hyderabad district.	1
Thar Parkar West ..	Mirpurkhas, Jamesabad, Digri and Sanghar talukas of the Thar Parkar district.	1
Thar Parkar North ..	Samaro, Umerkote and Khipro talukas of the Thar Parkar district.	1
Thar Parkar South ..	Mithi, Diplo, Chachro and Nagar Parkar talukas of the Thar Parkar district.	1

II.—MUHAMMADAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>Urban</i> .		
Karachi City North ..	Municipal Ward No. V of the City of Karachi	1
Karachi City South ..	Municipal Wards Nos. I, II, III, IV, VI, VII and VIII of the City of Karachi, the cantonments of Karachi and Manora and the limits of the Karachi Port Trust.	1

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Name of Constituency.	Extension of Constituency.	No. of seats
(ii) <i>Rural.</i>		
Karachi North ..	Tatta taluka and Karachi taluka (excluding the municipal limits of the City of Karachi, the cantonments of Karachi and Manora and the limits of the Karachi Fort Trust) of the Karachi district.	1
Karachi South ..	Mirpur Sakro Ghorabari and Shahbunder talukas and Ketibunder mahal of the Karachi district.	1
Karachi East ..	Jati, Sujawal and Mirpur Bathoro talukas of the Karachi district.	1
Dadu North ..	Mehar and Kakar talukas of the Dadu district ..	1
Dadu Central ..	Dadu and Jolli talukas of the Dadu district ..	1
Dadu South ..	Koti and Seliwan talukas and Kohistan mahal of the Dadu district.	1
Larkana North ..	Ratodero and Mirokhan talukas of the Larkana district.	1
Larkana East ..	Larkana taluka of the Larkana district ..	1
Larkana South ..	Labdarya and Warah talukas of the Larkana district.	1
Larkana West ..	Kamhar and Shahdadkot talukas of the Larkana district.	1
Upper Sind Frontier East ..	Kandhkot and Kashmor talukas of the Upper Sind Frontier district.	1
Upper Sind Frontier Central ..	Thultaluka of the Upper Sind Frontier district ..	1
Upper Sind Frontier West ..	Jacobabad and Garhi Khairo talukas of the Upper Sind Frontier district.	1
Sukkur North-West ..	Shikarpur taluka of the Sukkur district ..	1
Sukkur South-West ..	Garhi Yasin taluka and Sukkur taluka (excluding the municipal borough of Sukkur) of the Sukkur district.	1
Sukkur South-East ..	The municipal borough of Sukkur and Rohri taluka of the Sukkur district.	1
Sukkur Central ..	Pano Akil and Ghotki talukas of the Sukkur district.	1
Sukkur North-East ..	Mirpur Mathelo and Ubauro talukas of the Sukkur district.	1
Nawabshah North ..	Kandiaro taluka of the Nawabshah district ..	1
Nawabshah North-West ..	Naushahro taluka of the Nawabshah district ..	1
Nawabshah West ..	Moro and Sakrand talukas of the Nawabshah district.	1
Nawabshah South ..	Shahdadpur taluka of the Nawabshah district ..	1
Nawabshah East ..	Nawabshah and Sinjhora talukas of the Nawabshah district.	1
Hyderabad North ..	Hala taluka of the Hyderabad district ..	1
Hyderabad North-West ..	Hyderabad taluka or the Hyderabad district ..	1
Hyderabad South-West ..	Guni taluka of the Hyderabad district ..	1
Hyderabad East ..	Tando Allahyor and Dero Mohabat talukas of the Hyderabad district.	1
Hyderabad South ..	Tando Bago and Badin talukas of the Hyderabad district.	1
Thar Parkar West ..	Mirpurkhas, Jamesabad, Rigri and Samaro talukas of the Thar Parkar district.	1
Thar Parkar North ..	Sanghar, Umerkote and Khipro talukas of the Thar Parkar district.	1
Thar Parkar South ..	Mithi, Diplo, Chachro and Nagar Parkar talukas of the Thar Parkar district.	1

III.—WOMEN'S CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
(i) <i>General Urban.</i>		
Hyderabad-cum-Karachi City.	Wards Nos. I and II of the municipal borough of Hyderabad and Municipal Ward, Nos. III and VI of the City of Karachi.	1
(ii) <i>Muhammadian Urban.</i>		
Karachi City ..	Municipal Wards Nos. I, II, III, VI, VII and VIII of the City of Karachi.	1

IV.—EUROPEAN CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Hyderabad-cum-Karachi City.	Municipal Ward No. VII of the City of Karachi and the Cantonment of Karachi.	1
Sind ..	The remainder of the Province ..	1

V.—COMMERCE AND INDUSTRY CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of seats.
Karachi Chamber of Commerce.	Non-territorial ..	1
Indian Commerce ..	Non-territorial ..	1

VI.—LANDHOLDERS CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Landholders ..	The whole province ..	2

VII.—LABOUR CONSTITUENCY.

Name of Constituency.	Extent of Constituency.	No. of seats.
Registered Factories ..	Headquarters towns in the Province with Shikarpur.	1

THIRTEENTH SCHEDULE.

BACKWARD TRIBES.

PART I.

MADRAS.

- | | |
|---|---|
| 1. Bagata. | 19. Kodu. |
| 2. Bhottadas—Bodo Bhottada, Muria Bhottada and Sano Bhottada. | 20. Kommar. |
| 3. Bhumias—Bhuri Bhumia and Bodo Bhumia. | 21. Konda Dhoras. |
| 4. Bissoy—Barangi Jodia, Bennangi, Daduva, Frangi, Hollar, Jhoriya, Kollai, Konde, Paranga, Pengajodia, Sodo Jodia and Takora. | 22. Konda Kapus. |
| 5. Dhakkada. | 23. Kondareddis. |
| 6. Dombs—Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telaga and Ummia. | 24. Kondhs—Desaya Kondhs, Dongria Kondhs, Kutiya Kondhs, Tikiria Kondhs and Yenity Kondhs. |
| 7. Gadabas—Boda Gadaba, Cerillam Gadaba, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba. | 25. Kotia—Bartuka, Benthio Oriya, Dhulia or Dulta, Holva, Paiko, Putiya, Sanrona and Sidiho Paiko. |
| 8. Ghasis—Boda Ghasis and San Ghasis. | 26. Koya or Goud with its sub-sects, Raja or Kasha koyas, Lingadhari koyas, Koyas (ordinary) and Kottu koyas. |
| 9. Gondi—Modya Gond and Rajo Gond. | 27. Madigas. |
| 10. Goudus—Bato, Bhirithya, Dudhokouriya, Hato, Jatako and Joria. | 28. Malas or Agency Malas or Valmiki. |
| 11. Kosalya Goudus—Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Joddu Kamariya, Dulu Kamaro, Ladya Goudus and Pullosoriya Goudus. | 29. Malis—Korchia Malis, Paiko Malis, and Pedda Malis. |
| 12. Magatha Goudus—Bernia Goudu, Boodo Magatha, Dongayath Goudu, Ladya Goudu, Poona Magatha and Sana Magatha. | 30. Maune. |
| 13. Seerithi Goudus. | 31. Manna Dhora. |
| 14. Holva. | 32. Mukha Dora—Nooka Dhora. |
| 15. Jadapus. | 33. Muli or Muliya. |
| 16. Jatapus. | 34. Muria. |
| 17. Kammaras | 35. Ojulus or Metta Komsalies. |
| 18. Khattis—Khatti, Kommaro and Lohara. | 36. Omanaito. |
| | 37. Paigarapu |
| | 38. Palasi. |
| | 39. Pali. |
| | 40. Pentias. |
| | 41. Porjas—Bodo, Bonda, Daruva Didua, Jodia, Mundili, Pengu, Pydi and Saliya. |
| | 42. Reddi Dhoras. |
| | 43. Relli or Sachandi. |
| | 44. Ronas. |
| | 45. Savaras—Kapu Savaras, Khutto Savaras and Mallya Savaras. |

PART II.

BOMBAY.

- | | |
|--------------------------|--|
| 1. Barda. | 14. Naikda, or Nayak. |
| 2. Bavacha. | 15. Bardhi, including Advichincher or Phanse Pardhi. |
| 3. Bhil. | 16. Patelia. |
| 4. Chodhra. | 17. Pomla. |
| 5. Dhanka. | 18. Powara. |
| 6. Dhodia. | 19. Rathawa. |
| 7. Dubla. | 20. Tadvi Bhil. |
| 8. Gamit, or Gamta. | 21. Thakur. |
| 9. Gond. | 22. Valvai. |
| 10. Kathodi, or Katkari. | 23. Varli. |
| 11. Konkna. | 24. Vasava. |
| 12. Koli Mahadev. | |
| 13. Mavchi. | |

ORDERS IN COUNCIL.

PART III.

BIHAR.

A person shall be deemed to be a member of a backward tribe if and only if—

(a) he is resident in the Province and belongs to any of the following tribes:—

- | | | |
|-----------------|---------------|---------------------|
| 1. Asur. | 12. Gond. | 23. Kora. |
| 2. Banjara. | 13. Gorait. | 24. Korwa. |
| 3. Bathudi. | 14. Ho. | 25. Mahli. |
| 4. Bentkar. | 15. Juang. | 26. Mal Paharia. |
| 5. Binjhia. | 16. Karmali. | 27. Munda. |
| 6. Birhor. | 17. Kharia. | 28. Oraon. |
| 7. Birjia. | 18. Kharwar. | 29. Parhaiya. |
| 8. Chero. | 19. Khetauri. | 30. Santal. |
| 9. Chik Baraik. | 20. Khond. | 31. Sauria Paharia. |
| 10. Gadaba. | 21. Kisan. | 32. Savar. |
| 11. Ghatwar. | 22. Koli. | 33. Tharu. |

(b) he is resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahbhum, Patamda, Banduan, and Manbazar in the district of Manbhum, and belongs to any of the following tribes:—

- | | |
|------------|------------|
| 1. Bauri. | 5. Ghasi. |
| 2. Bhogta. | 6. Pan. |
| 3. Bhuiya. | 7. Rajwar. |
| 4. Bhumji. | 8. Turi. |

(c) he is resident in the Dhanbad sub division or in any of the following police stations in the Manbhum district, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandankiari and Kashipur. and belongs to the Bhumij tribe.

PART IV.

CENTRAL PROVINCES.

- | | |
|--------------------|-------------------------|
| 1. Gond. | 19. Parja. |
| 2. Kavar. | 20. Kamar. |
| 3. Maria. | 21. Bhunjia. |
| 4. Muria. | 22. Nagarchi. |
| 5. Halba. | 23. Ojha. |
| 6. Pardhan. | 24. Korku. |
| 7. Oraon. | 25. Kol. |
| 8. Binjhar. | 26. Nagasia. |
| 9. Andh. | 27. Sawara. |
| 10. Bharia—Bhumia. | 28. Korwa. |
| 11. Koli. | 29. Majhwar. |
| 12. Bhattra. | 30. Kharia. |
| 13. Baiga. | 31. Saunta. |
| 14. Kolam. | 32. Koudli. |
| 15. Bhil. | 33. Nihal. |
| 16. Bhuinhar. | 34. Birhul (or Birhor). |
| 17. Dhanwar. | 35. Rautia. |
| 18. Bhaina. | 36. Pando. |

PART V.

ASSAM.

The following tribes and communities:—

- | | |
|--------------------------|---|
| 1. Kachari. | 9. Deori. |
| 2. Boro or Boro-Kachari. | 10. Abor. |
| 3. Rabha. | 11. Mishmi. |
| 4. Miri. | 12. Daffa. |
| 5. Lalung. | 13. Singpho. |
| 6. Mikir. | 14. Khampati. |
| 7. Garo. | 15. Any Naga or kuki tribe. |
| 8. Hajong. | 16. Any other tribe or community for the time being designated by the Governor in his discretion. |

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PART VI.

ORISSA.

A person shall be deemed to be a member of a backward tribe if and only if—

(a) he is resident in the province and belongs to any of the following tribes:—

- | | |
|------------------|--------------------|
| 1. Bagata. | 11. Saura (Savar). |
| 2. Banjari. | 12. Oraon. |
| 3. Chenchu. | 13. Santal. |
| 4. Gadaba. | 14. Kharia. |
| 5. Gond. | 15. Munda. |
| 6. Jatapu. | 16. Banjara. |
| 7. Khond (Kond). | 17. Binjhia. |
| 8. Konda-Dora. | 18. Kisan. |
| 9. Koya. | 19. Koli. |
| 10. Paroja. | 20. Kora. |

(b) he is resident in any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency and belongs to either of the following tribes:—

- | | |
|------------------|-----------------|
| 1. Dom or Dumbo. | 2. Pan or Pano. |
|------------------|-----------------|

(c) he is resident in the Sambalpur district and belongs to any of the following tribes:—

- | | |
|------------|-----------------|
| 1. Bauri. | 4. Ghasi. |
| 2. Bhuiya. | 5. Turi. |
| 3. Bhumij. | 6. Pan or Pano. |

THE GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE COUNCILS) ORDER, 1936.

AT THE COURT AT BUCKINGHAM PALACE,

The 30th day of April, 1936.

Present,

**THE KING'S MOST EXCELLENT MAJESTY
IN COUNCIL.**

WHEREAS by section two hundred and ninety-one of, and the Fifth Schedule to, the Government of India Act, 1935 (hereafter in this Order referred to as "the Act") His Majesty in Council is empowered to make provision with respect to certain matters connected with Provincial Legislative Councils:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling Him in that behalf, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered, as follows:—

PART I.

INTRODUCTORY AND GENERAL.

Introductory.

1. This Order may be cited as THE GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE COUNCILS) ORDER, 1936."

2.—(1) In this Order, except where the context otherwise requires—

"Executive Council" means the Executive Council of the Governor-General or a Governor;

"Legislature" includes any Legislature or Legislative Council under the Government of India Act, or any Act, repealed by that Act;

"Minister" means a Minister under the Act or the Government of India Act;

"prescribed," except in the phrase "the prescribed date," means prescribed by an Act of the Provincial Legislature or by rules;

"rules" means rules made by the Governor under paragraph twenty of the Fifth Schedule to the Act;

"total income" means total income as computed for the purposes of the Indian Income-tax Act, 1922;

and, subject as aforesaid and to any other provisions of this Order, expressions to which a meaning is assigned by the Sixth Schedule to the Act, either generally or in relation to any particular Province, have, except where the context otherwise requires, the same meanings for the purposes of this Order, either generally or in relation to that Province, as the case may be.

(2) The fact that one of two constituencies is an urban, and the other a rural, constituency shall not prevent them being deemed to be constituencies of same communal description, if they are both general constituencies, or constituencies assigned to a specified community, and the expression "seat of the same communal description" shall be construed accordingly.

(3) For the purposes of any reference in this Order to persons assessed to income-tax in any financial year and having in the year in respect of which the assessment was made a total income of not less than a specified amount, a person who is a partner in a firm which is assessed to income-tax shall be deemed to be himself assessed in respect of his share of the firm's income on which income-tax is so assessed, and the amount to be included in his total income in respect of that share shall be such sum as may be certified in the prescribed manner.

(4) Any reference in this Order to all or any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act, or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted.

(5) If the boundaries of any district or other administrative area mentioned in this Order are altered, any reference in this Order to that district or area shall, as from such date or dates as may be fixed by the Governor, exercising his individual judgment, either for all purposes, or for particular purposes, of this Order, be taken as a reference to the district or area as altered.

(6) If any question arises with respect to any qualification dependent on the holding of a title, order or decoration, the question shall be referred to the Governor-General in his discretion and his decision shall be final.

(7) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Delimitation of Territorial Constituencies.

3. (1) The territorial constituencies for the election of persons to fill seats in the Provincial Legislative Councils shall be as specified in the tables in the Schedule to this Order.

(2) Any reference in this Part of this Order to a territorial constituency shall be construed as a reference to one of the territorial constituencies aforesaid, and any reference in any of the subsequent Parts of this Order to a territorial constituency shall be construed as a reference to one of the said constituencies for the Province to which the Part in question relates.

(3) In the case of Madras and Bombay the number of seats to be filled by elections in the various territorial constituencies shall be as specified in the third column of Parts I and II of the Schedule to this Order.

In the case of Bengal, the United Provinces, Bihar and Assam one seat shall be filled by an election in each constituency, except that in Bengal three seats shall be so filled in the European constituency.

4. There shall be an electoral roll for every territorial constituency, and no person who is not, and except as expressly provided by the Fifth Schedule to the Act and this Order, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

5. The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Order referred to as "the prescribed date," as may be directed in each case by the Governor, exercising his individual judgment.

6. No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

- (a) a British subject; or
- (b) the Ruler or a subject of a Federated State; or
- (c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

7. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent Court.

8. No person shall be included in the electoral roll for a Muhammadan constituency, a European constituency or an Indian Christian constituency unless he is a Muhammadan, European or an Indian Christian, as the case may be.

9. No person who is or is entitled to be included in the electoral roll for any Muhammadan constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province.

10. Notwithstanding anything in the Indian Income-tax Act, 1922, it shall be the duty of the appropriate Income-tax Officers to give to any person charged by law with the duty of inquiring into the qualifications of electors such information as is necessary for the purpose of enabling him to discharge that duty.

11. (1) No person shall in any Province—

(a) at the first elections held for the purpose of constituting the Legislative Council of that Province; or

(b) at the elections held in every third year thereafter to fill the seats of members retiring on the expiration of their respective terms of office,

vote in more than one territorial constituency, and if any person votes in more than one territorial constituency in contravention of the provisions of this paragraph, his votes in all those constituencies shall be void.

(2) In each Province such provisions, if any, as may be prescribed shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency.

(3) No person shall at any election vote more than once in the same territorial constituency and, if he does so, all his votes in that constituency shall be void.

12. No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may

be made or passed under the Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included.

13. No person shall vote at an election in a territorial constituency if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment.

14. The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands:—

- (a) a woman who, at the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, notwithstanding anything in the subsequent provisions of this Order, continue to be on the roll for that constituency unless she remarries or becomes disqualified under the foregoing provisions of this Order for inclusion in that roll:
- (b) not more than one woman shall, at any one time, appear on the electoral rolls for the territorial constituencies of a Province in respect of the qualifications of any particular man, and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner:

Provided that, if a woman, who is entitled by virtue of sub-paragraph (a) of this paragraph to remain on the roll of a territorial constituency, changes her place of residence, then, if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

15. For the purposes of this Order any property owned, held or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver, or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Order, be left out of account.

Qualifications of Candidates.

16. (1) The provisions of this paragraph shall have effect with respect to the qualifications to be possessed by members of the Legislative Council of a Province.

(2) A person shall not be qualified to be chosen to fill a seat which is filled by an election in a territorial constituency unless he is entitled to vote in the choice of a member to fill that seat or any other seat of the same communal description in the same Council.

(3) A person shall not be qualified to be chosen to fill a seat to be filled by a person elected by the members of the Legislative Assembly of a Province unless he is entitled to vote in the choice of a member to fill some seat in the Legislative Council of that Province.

(4) A person shall be qualified to be chosen to fill a seat which is to be filled by a person chosen by the Governor in his discretion if he is resident in the Province and is not disqualified to hold a seat by any of the provisions of the Act.

General.

17. (1) The dates on which nominations are to be made and scrutinised, polls held and other acts done in connection with elections to a Provincial Legislative Council shall be fixed by the Governor in his discretion.

(2) Nothing in this paragraph shall be construed as preventing Acts of the Provincial Legislature or rules from making general provision with respect to the intervals which are to elapse between the successive stages of an election.

18. At an election in a territorial constituency where more than one seat is to be filled on a poll a voter shall have as many votes as there are seats to be filled and may give all those votes to any one candidate, or may distribute them between such candidates in such manner as he thinks fit:

Provided that in the European constituency in Bengal a voter shall not give more than one vote to any one candidate.

19. If, when a poll has been taken at an election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the Returning Officer to the candidate, or, as the case may be, the candidates, selected by lot drawn in the presence of the Returning Officer in such manner as he may determine.

20. At any election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council, the returning officer shall be nominated by the Governor in his discretion, and nominations shall be made and scrutinised, polls held, and other acts done in connection with the election to, by, or before the returning officer, or persons who are under his control or have been placed thereunder for the purposes of the election.

21. If a person is elected to more than one seat in a Provincial Legislative Council, then unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant.

22. The Governor of a Province may at any time vary the name assigned to a territorial constituency if for any reason he deems it expedient so to do.

23. Anything which under the provisions of the Act, or of this Order, is required or authorised to be done by, to or before the Governor of a Province in connection with the preparation of electoral rolls or the holding of elections, or otherwise for the purpose of constituting the Legislative Council of the province in due time (whether or not the Governor is to act in his discretion or to exercise his individual judgment) shall, before the commencement of Part III of the Act, be done by, to or before the Governor in Council.

PART II.**MADRAS.***Requirement as to Residence.*

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not less than one hundred and twenty days in the previous financial year.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he

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resides, if he is at liberty to return to the house at any time and has not abandoned his intension of returning.

Ordinary Qualifications.

2. Subject to the provisions of Part I of this Order and to any over-riding provisions of this Part of this Order, a person shall be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than seven thousand five hundred rupees; or
- (b) was on the last day of the previous fasli year the holder of an estate in the Province of which the annual income is not less than one thousand five hundred rupees; or
- (c) was on the last day of the previous fasli year a registered inamdar, ryotwari pattadar, or occupancy ryot under the Madras Estates Land Act, 1908, in respect of land in the Province of which the annual rent value is not less than three hundred rupees; or
- (d) is in receipt from any Government in British India of a malikhana allowance, the annual amount of which is not less than five hundred rupees; or
- (e) holds any title, order or decoration conferred by or on behalf of His Majesty, not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, or Rao Bahadur; or
- (f) has been awarded by any Government in British India a civil, military or political pension of not less than two hundred and fifty rupees per month; or
- (g) is or has been either—
 - (i) a non-official member of any Legislature in British India; or
 - (ii) a member of an executive Council or a Minister in British India; or
 - (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of, any University constituted by law in British India; or
 - (iv) a judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India; or
 - (v) the mayor or sheriff of Madras, Calcutta or Bombay; or
 - (vi) the non-official president of a district board in the Province, or the non-official chairman of a municipal council in the Province; or
 - (vii) the non-official president of any central bank or banking union which is a registered society within the meaning of section two of the Madras Co-operative Societies Act, 1932, and does not operate solely outside the Province.

Additional Qualifications for Women.

3. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the wife of a person who either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than twenty thousand rupees; or
- (b) was on the last day of the previous fasli year the holder of an estate in the Province of which the annual income is not less than three thousand rupees; or
- (c) was on the last day of the previous fasli year a registered inamdar, ryotwari pattadar, or occupancy ryot under the Madras Estates Land Act, 1908, in respect of land in the Province of which the annual rent value is not less than one thousand five hundred rupees; or
- (d) is in receipt from any Government in British India of a malikhana allowance, the annual amount of which is less than one thousand five hundred rupees; or
- (e) holds any such title, order or decoration, or has been awarded any such pension as is mentioned in sub-paragraphs (e) and (f) of the last preceding paragraph.

Special Qualifications for Scheduled Castes.

4. Subject as aforesaid, a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) was in the previous financial year assessed to income-tax; or
- (b) was on the last day of the previous fasli year the holder of an estate in the Province of which the annual rent value is not less than one hundred rupees; or
- (c) was on the last day of the previous fasli year a registered inamdar, ryotwari pattadar, or occupancy ryot under the Madras Estates Land Act, 1908, in respect of land in the Province of which the annual rent value is not less than fifty rupees; or
- (d) was throughout the previous fasli year a kanamdar, or a kuzhikanamdar or a verumpattamdar having fixity of tenure, each of these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929; or
- (e) was throughout the previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value of not less than one hundred rupees; or
- (f) was on the last day of the previous fasli year registered jointly with the proprietor under section fourteen of the Malabar Land Regulation Act, 1895, as an occupant of land of which the annual rent value is not less than one hundred rupees; or
- (g) held on the last day of the previous fasli year as ryot or as tenant under a landholder land in the Province of which the annual rent value is not less than one hundred rupees; or
- (h) was assessed in the Province in the previous financial year to an aggregate amount of not less than twenty rupees in respect of all or any of the following taxes, namely, property tax, profession tax and house-tax.

Supplementary.

5. (1) Subject to the provisions of this paragraph, property held jointly by, and assessments made jointly on, more than one person shall be left out of account for the purposes of this Order.

(2) Where any such property or assessments would qualify a person if they had been held by or made on him solely, then, subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, one of those persons shall be qualified in respect of the property or assessments and that person shall be—

- (a) if the property is held by, or the assessments made on a Hindu joint family, the manager thereof;
- (b) if the property is held by, or the assessments made on, any other joint family, the member thereof authorised in that behalf by the family themselves;
- (c) in any other case, the person authorised in that behalf by a majority of the persons by or on whom the property is held or the assessments made.

(3) Nothing in this paragraph affects the provisions of Part I of this Order relating to partners in firms assessed to income-tax.

PART III.

BOMBAY.

Requirement as to Residence.

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency.

For the purposes of this Part of this Order a person shall be deemed to satisfy the requirement as to residence—

- (a) in relation to a Bombay City constituency, being either general or a Muhammadan constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency, or in the Thana mahal;
- (b) in relation to the European constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province;
- (c) in relation to any other constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency, or in a contiguous territorial constituency of the same communal description.

(2) A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

Ordinary Qualifications.

2. Subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was

made a total income of not less than fifteen thousand rupees; or

- (b) is a Deccan Sardar or a Gujarat Sardar, that is to say, a person whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated the 23rd July, 1867, or in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated the 21st September, 1909; or
- (c) is the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situate within the constituency or is the sole talukdar holding on talukdari tenure such a village, or is a khot responsible for the payment of land revenue in respect of such a village; or
- (d) holds in his own right, or occupies as tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than three hundred and fifty rupees land revenue; or
- (e) is the alienee of the right of Government to the payment of rent or land revenue amounting to not less than three hundred and fifty rupees in respect of alienated land in the constituency; or
- (f) is a khot or a sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency, and is responsible for the payment of not less than three hundred and fifty rupees land revenue; or
- (g) holds any title, order or decoration conferred by or on behalf of His Majesty, not being lower than Diwan Bahadur, Sardar Bhadur, Khan Bahadur, Rai Bahadur, or Rao Bahadur; or
- (h) has been awarded by any Government in British India a civil, military or political pension of not less than two hundred and fifty rupees per month; or
- (i) is or has been either—
 - (i) a non-official member of any Legislature in British India; or
 - (ii) a member of an Executive Council or Minister in British India; or
 - (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of, any University constituted by law in British India; or
 - (iv) a judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India; or
 - (v) the mayor or sheriff of Madras, Calcutta or Bombay; or
 - (vi) the non-official president of a municipality in the province constituted under the Bombay Municipal Boroughs Act, 1925, or of a City Municipality in the Province within the meaning of sub-section (1) of section three of the Bombay District Municipal Act, 1901, or of a District Local Board in the Province established or deemed to have been established under the Bombay Local Boards Act, 1923; or

- (vii) the non-official Chairman of the Bombay Provincial Co-operative Bank, or any Central Bank registered under the Co-operative Societies Act, 1912, or of the Bombay Co-operative Societies Act, 1925, and operating in the Province.

Additional Qualifications for Women.

3. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the wife of a person who satisfies the requirement as to residence in relation to the constituency and either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than thirty thousand rupees; or
- (b) is a Deccan Sardar or a Gujarat Sardar, that is to say, a person whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated 23rd July, 1867, or in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated 21st September, 1909; or
- (c) is a sole alienee of the right of the Government to the payment of rent or land revenue in respect of an entire village in the constituency assessed to land revenue of not less than two thousand rupees, or a talukdar holding on talukdari tenure land in the constituency assessed at not less than two thousand rupees land revenue, or a co-sharer holding on talukdari tenure a share in any land in the constituency which share if held separately would be assessed at not less than two thousand rupees land revenue, or a khot responsible for the payment of land revenue in respect of an entire village in the constituency assessed at not less than two thousand rupees land revenue; or
- (d) holds in his own right alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than two thousand rupees land revenue; or
- (e) holds any such title, order or decoration, or has been awarded any such pension, as is mentioned in sub-paragraphs (g) and (h) of the last preceding paragraph.

Special Qualifications for Scheduled Castes.

4. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) holds in his own right, or occupies as tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than fifty rupees land revenue; or
- (b) is the alienee of the right of Government to the payment of rent or land revenue amounting to not less than fifty rupees in respect of alienated land in the constituency; or
- (c) is a khot or a sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and is responsible for the payment of not less than fifty rupees land revenue; or

- (d) occupies in the constituency as owner or tenant a house or building, situate in the City of Bombay or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value.

In sub-paragraph (d) of this paragraph the expression the "appropriate value" means—

- (i) in relation to a house or building situate in any area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of two hundred and one rupees;
- (ii) in relation to any other house or building, a capital value of three thousand three hundred any fifty rupees.

Supplementary.

5. (1) Subject to the provisions of this paragraph, any reference in this Part of this Order to land or other immovable property, or to rent or land revenue in respect of alienated land, shall in relation to any persons who are co-sharers in such land, property, rent or land, revenue, be construed as a reference to the respective shares of those persons:

Provided that this sub-paragraph shall not apply to sub-paragraph (c) of paragraph two or sub-paragraph (c) of paragraph three of this Part of this Order.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied, or payment are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a person if they had been owned, held, occupied or made by or on him solely, then, subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves.

Save as aforesaid, any property owned, held or occupied, or payment made, jointly by, assessments made jointly on, the members of a joint family shall be left out of account for the purposes of this Part of this Order.

(4) Nothing in this paragraph affects the provisions of Part I of this Order relating to partners in firms assessed to income-tax.

6. (1) The value of any machine, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Order the rental value or the capital value of the house or building.

(2) In computing for the purposes of this Part of this Order the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

PART IV.

BENGAL.

Requirement as to Residence.

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency:

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Provided that in the case of a European constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Bengal but is absent from Bengal on leave from his employment.

(2) In this paragraph "a place of residence" means a place where a person ordinarily and actually resides during the greater part of the year.

Ordinary Qualifications.

2. Subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, a person shall be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than five thousand rupees; or
- (b) holds any title, order or decoration conferred by or on behalf of His Majesty, not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, or Rao Bahadur; or
- (c) has been awarded by any Government in British India a civil, military or political pension of not less than two hundred and fifty rupees per month; or
- (d) is or has been either—
 - (i) a non-official member of any Legislature in British India; or
 - (ii) a member of an Executive Council or a Minister in British India; or
- (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of, any University constituted by law in British India; or
- (iv) a judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India; or
- (v) the mayor or sheriff of Madras, Calcutta or Bombay; or
- (vi) the non-official chairman or vice-chairman of a municipality in the Province constituted under the Bengal Municipal Act, 1884, or the Bengal Municipal Act, 1932, or of a district board in the Province established under the Bengal Local Self-Government Act of 1885; or
- (vii) the non-official chairman, deputy chairman or vice-chairman of any co-operative central bank or union, or Provincial co-operative federation, which is a registered society within the meaning of section two of the Co-operative Societies Act, 1912, and does not operate solely outside the Province.

Additional Qualifications for non-Muhammadan Constituencies.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency which is not a Muhammadan constituency if he either—

- (a) within the Burdwan and Presidency Divisions held during the previous year in his own right as a proprietor or permanent tenure holder one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from a proprietor, and paid in respect thereof

land revenue or rent or both amounting to not less than two thousand rupees, or road and public works cesses amounting to not less than five hundred rupees; or

- (b) within the Dacca, Rajshahi and Chittagong Divisions, held during the previous year in his own right as a proprietor or permanent tenure holder one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from a proprietor, and paid in respect thereof land revenue or rent or both amounting to not less than fifteen hundred rupees, or road and public works cesses amounting to not less than three hundred and fifty rupees.

Additional Qualifications for Muhammadan Constituencies.

4. Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any Muhammadan territorial constituency, if within the Province he held during the previous year in his own right as a proprietor or as a permanent tenure-holder one or more estates or shares of estates, or one or more permanent tenures or shares of such tenures held direct from a proprietor, and paid in respect thereof land revenue or rent or both amounting to not less than two hundred and fifty rupees, or road and public works cesses amounting to not less than fifty rupees.

Additional Qualifications for Women.

5. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if her husband possesses the qualifications requisite for the purposes of this paragraph.

6. A husband shall be deemed to possess the qualifications requisite for the purposes of the last foregoing paragraph if he holds any such title, order or decoration, or has been awarded any such pension, as is mentioned in sub-paragraphs (b) and (c) of paragraph two of this Part of this Order.

7. A husband who is not a Muhammadan shall be deemed also to possess the qualifications requisite for the said purposes if he either—

- (a) was during the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than twelve thousand rupees; or
- (b) within the Burdwan and Presidency Divisions held during previous year in his own right as proprietor one or more estates or shares of estates and paid in respect thereof land revenue amounting to not less than seven thousand five hundred rupees or road and public works cesses amounting to not less than one thousand eight hundred and seventy-five rupees; or
- (c) within the Dacca, Rajshahi and Chittagong Divisions held during the previous year in his own right as a proprietor one or more estates or shares of estates or one or more permanent tenures or shares of such tenures held direct from the proprietor, and paid in respect thereof land revenue amounting to not less than five thousand rupees or road and public works cesses amounting to not less than one thousand two hundred and fifty rupees.

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8. A husband is who a Muhammadan shall be deemed also to possess the qualifications requisite for the said purposes if he either—

- (a) was during the previous year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than six thousand rupees; or
- (b) held within the Province during the previous year in his own right as a proprietor or a permanent tenure holder one or more estates or shares of estates or one or more permanent tenures or shares of such tenures held direct from the proprietor, and paid in respect thereof land revenue amounting to not less than six hundred rupees or road and public works cesses amounting to not less than one hundred and twenty-five rupees.

Interpretation, &c.

9 (1) In this Order in relation to Bengal—

“estate” means land included under one entry in any of the general registers of revenue-paying lands or revenue-free lands prepared and maintained under the law for the time being in force by the collector of a district, and includes government khas mahals and revenue-free lands not entered in any register;

“permanent tenure” means a tenure which is heritable and which is not held for a limited time;

“proprietor” means a person owning an estate or share of an estate.

(2) In determining any question whether a person possesses any qualification by virtue of the payment of land revenue or rent road and public works cesses—

- (a) estates, permanent tenures and shares of such estates and tenures within the district of the the Chittagong Hill Tracts shall be left out of account;
- (b) an estate or share of an estate shall not be taken into account if it is registered in the name of some other person in the registers maintained under the Land Registration Act, 1876;
- (c) if the amount of land revenue or rent or road and public works cesses paid in respect of any share of an estate or permanent tenure is not definitely known, the district officer of the district in which the estate or tenure is situated shall estimate the amount paid in respect of the share and his decision shall be final.

(3) For the purposes of this Part of this Order a mutwali or manager of a wakf estate, or a shebait of a debattar estate, shall be deemed to hold that estate and make payments in respect thereof in his own right and not in a fiduciary capacity.

(4) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves:

Provided that this sub-paragraph shall not apply where members of a joint family have separate accommodation and separate messing and in any such case any reference in this Part of this Order to any property, payment or assessment shall be construed as a reference to each member's share of that property, payment or assessment.

PART III.

THE UNITED PROVINCES.

Requirement as to Residence.

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

(2) For the purposes of this Part of this Order a person shall be deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling-house therein ready for occupation in which he occasionally dwells.

Ordinary Qualifications.

2. Subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than four thousand rupees; or
- (b) holds any title, order or decoration conferred by or on behalf of His Majesty, not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, or Rao Bahadur; or
- (c) has been awarded by any Government in British India a civil, military or political pension of not less than two hundred and fifty rupees per month; or
- (d) is or has been either—
 - (i) a non-official member of any Legislature in British India; or
 - (ii) a member of an Executive Council or a Minister in British India; or
- (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of, any University constituted by law in British India; or
- (iv) a judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India; or
- (v) the mayor or sheriff of Madras, Calcutta or Bombay; or
- (vi) the non-official chairman of a district board constituted under the United Provinces District Boards Act, 1922, or any Act repealed by that Act, or of a municipal board constituted under the United Provinces Municipalities Act, 1916, or any Act repealed by that Act; or
- (vii) the non-official president of any central co-operative society within the meaning of section two of the Co-operative Societies Act, 1912, which does not operate solely outside the Province.

3. (1) Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) owns land in the constituency on which land revenue of not less than one thousand rupees per annum is payable; or
- (b) owns land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency amounts to not less than one thousand rupees per annum; or
- (c) is a tenant of land in the constituency in respect of which rent of not less than one thousand five hundred rupees per annum or rent in kind equivalent to not less than one thousand five hundred rupees per annum is payable; or
- (d) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary rent of not less than one thousand rupees per annum is payable.

(2) As regards any territorial constituency comprising any part of the Hill Patis of Kumaun, the provisions of the preceding sub-paragraph, other than the provisions relating to under-proprietors in Oudh, shall have effect, in relation to persons resident in those Hill Patis, as if for any reference to one thousand rupees or one thousand five hundred rupees there were substituted a reference to one hundred rupees.

Additional Qualifications for Women.

4. Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the wife of a person who either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than ten thousand rupees; or
- (b) owns land in the constituency on which land revenue of not less than five thousand rupees per annum is payable; or
- (c) owns land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than five thousand rupees per annum; or
- (d) holds any such title, order or decoration, or has been awarded any such pension, as is mentioned in sub-paragraphs (b) and (c) of paragraph two of this Part of this Order.

Special Qualification for Scheduled Castes.

5. Subject as aforesaid, a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than two thousand rupees; or
- (b) owns land in the constituency on which land revenue of not less than two hundred rupees per annum is payable; or

- (c) owns land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than two hundred rupees per annum; or
- (d) is a tenant of land in the constituency in respect of which rent of not less than five hundred rupees per annum or rent in kind equivalent to not less than five hundred rupees per annum is payable; or
- (e) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary rent of not less than two hundred rupees per annum is payable; or
- (f) holds any title conferred on him by the Governor-General of India.

Supplementary.

6. Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family or joint tenancy, the family or tenancy shall be adopted as the unit in deciding whether under this Part of this Order the requisite qualification exists, and, if it does exist, the person qualified shall be, in the case of a joint Hindu family, the manager thereof, or, if there is no manager, the member nominated in that behalf by the majority of the family, and in other cases the member nominated in that behalf by the family or the tenancy concerned.

PART VI.

BIHAR.

Requirement as to Residence.

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he resides in the constituency.

(2) A person shall be deemed to reside within a constituency if he ordinarily lives therein or has his family dwelling therein which he occasionally occupies or maintains therein a dwelling-house ready for occupation which he occasionally occupies.

Ordinary Qualifications.

2. Subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, a person shall be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) was assessed during the previous financial year to income tax and had in the year in respect of which the assessment was made a total income of not less than seven thousand five hundred rupees; or
- (b) holds land in the Province for which he is liable to pay—
 - (i) in the case of a Muhammadan constituency, land revenue amounting in the aggregate to not less than three hundred and seventy-five rupees per annum, or local cess amounting in the aggregate to not less than sixty-two rupees eight annas per annum; and
 - (ii) in the case of any other constituency, land revenue amounting in the aggregate to not less than six hundred rupees

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per annum, or local cess amounting in the aggregate to not less than one hundred rupees per annum; or

- (c) holds any title, order or decoration conferred by or on behalf of his Majesty, not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, or Rao Bahadur; or
- (d) has been awarded by any Government in British India a civil, military or political pension of not less than one hundred and fifty rupees per month; or
- (e) is or has been either—
 - (i) a non-official member of any Legislature in British India; or
 - (ii) a member of an Executive Council or a Minister in British India; or
 - (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of, any University constituted by law in British India; or
 - (iv) a judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India; or
 - (v) the mayor or sheriff of Madras, Calcutta or Bombay; or
 - (vi) the non-official chairman or vice-chairman or non-official president or vice-president of a municipality in the Province constituted under the Bihar and Orissa Municipal Act, 1922, or of a committee appointed to administer an area in the Province in respect of which a notification has been issued under section three hundred and eight of the said Act, or of the Patna Administration Committee, or of a district board or local board in the Province constituted under the Bihar and Orissa Local Self-Government Act, 1885, or of a district committee in the Province constituted under the Cess Act, 1880, (Bengal Act IX of 1880), or of a cantonment board in the Province constituted under the Cantonment Act, 1924; or
 - (vii) the non-official chairman or vice-chairman of any central bank or banking union which is registered society within the meaning of section 2 of the Bihar and Orissa Co-operative Societies Act, 1935, and does not operate solely outside the Province.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for a constituency which includes the district of Manbhum or the district of Singhbhum, if he is in the district in question a headman styled Tarafsardar, and a person being a member of a backward tribe, within the meaning of that term as used in any Order regulating elections to the Legislative Assembly of the Province, shall also be qualified to be included in the electoral roll for a constituency which includes the district of Ranchi, the district of Singhbhum or the district of the Santal Parganas, if he is in the district in question a headman styled Parganait or Manki.

Additional Qualifications for Women.

4. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the wife of the person who—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than twenty thousand rupees; or
- (b) holds land in the province for which he is liable to pay—
 - (i) in the case of a Muhammadan constituency, land revenue amounting in the aggregate to not less than one thousand two hundred rupees per annum, or local cess amounting in the aggregate to not less than two hundred rupees per annum, and
 - (ii) in the case of any other constituency, land revenue amounting in the aggregate to two thousand four hundred rupees per annum, or local cess amounting in the aggregate to not less than four hundred rupees per annum; or
- (c) holds any such title, order or decoration, or has been awarded any such pension, as is mentioned in sub-paragraphs (c) and (d) of the last but one preceding paragraph.

Special Qualifications for Scheduled Castes.

5. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if, at any primary election held for the purpose of electing candidates for a seat in the Provincial Legislative Assembly reserved for members of the scheduled castes, he was one of the persons, elected.

Supplementary.

6. (1) Subject to the provisions of this paragraph, where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases, the member authorised in that behalf by the family themselves.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and, if it does exist, then, subject to the provisions of Part I of this order and to any overriding provisions of this Part of this Order, one and one only of those persons shall be qualified and the person to be qualified shall be selected in the prescribed manner.

(3) Nothing in this paragraph affects the provisions of Part I of this Order relating to partners in firms assessed to income-tax.

PART VII.

ASSAM.

Requirement as to Residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has a place of residence in the constituency, and a person shall be deemed to have a place of residence in a constituency if he ordinarily lives in the constituency or has his family dwelling place in the constituency and occasionally occupies it:

Provided that in relation to the European constituency the provisions of this paragraph shall be deemed to be complied with in relation to

any person if he is actually employed anywhere in Assam but is absent from Assam on leave from his employment.

Ordinary Qualifications.

2. Subject to the provisions of Part I of this Order and to any overriding provisions of this Part of this Order, a person shall be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than three thousand rupees; or
- (b) is the owner of land in the constituency, the land revenue on which has been assessed or is assessable at not less than five hundred rupees per annum; or
- (c) is liable to pay local rates amounting in the aggregate to not less than fifty rupees per annum in respect of land in the constituency; or
- (d) holds any title, order or decoration conferred by or on behalf of His Majesty, not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, or Rao Bahadur; or
- (e) has been awarded by any Government in British India a civil, military or political pension of not less than one hundred rupees per month; or
- (f) is or has been either—
 - (i) a non-official member of any Legislature in British India; or
 - (ii) a member of an Executive Council or a Minister in British India; or
 - (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of any University constituted by law in British India; or
 - (iv) a judge of the Federal Court, any High Court, Chief Court or Judicial Commissioner's Court in British India; or
 - (v) the mayor or sheriff of Madras, Calcutta, or Bombay; or
 - (vi) the non-official chairman of a municipal board or small town committee constituted under the Assam Municipal Act, 1923, or of a local board constituted under the Assam Local Self-Government Act, 1915; or
 - (vii) the non-official chairman of any central bank or banking union which is a registered society within the meaning of section two of the Co-operative Societies Act, 1912, and which does not operate solely outside the Province.

Additional Qualifications for Women.

3. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the wife of a person who—

- (a) was in the previous financial year assessed to income-tax and had in the year in respect of which the assessment was made a total income of not less than six thousand rupees; or

- (b) is the owner of land in the constituency, the land revenue on which has been assessed, or is assessable, at not less than one thousand rupees per annum; or
- (c) is liable to pay local rates amounting in the aggregate to not less than one hundred rupees per annum in respect of land in the constituency; or
- (d) holds any such title or honour, or is in receipt of any such pension as is mentioned in sub-paragraphs (d) and (e) of the last preceding paragraph.

Special Qualifications for Scheduled Castes.

4. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was in the previous financial year assessed to income-tax; or
- (b) is the owner of land in the constituency, the land revenue on which has been assessed, or is assessable, at not less than one hundred and fifty rupees per annum; or
- (c) is liable to pay local rates amounting in the aggregate to not less than fifteen rupees per annum in respect of land in the constituency.

Special Provision as to Shillong.

5. A person shall be qualified to be included in the electoral roll for the Hills General Constituency, the Lower Assam Valley Muhammadan Constituency, or Surma Valley European Constituency, if he would be so qualified if so much of the areas under the jurisdiction of the Shillong Municipal Board and the Shillong Cantonment Authority as is not part of British India were included in the constituency.

Supplementary.

6. Subject to the provisions of this paragraph, where property is held or payments are made jointly by or assessments made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the necessary qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves:

Provided that any other member of any such family shall also be qualified if the proportion of the joint property, payment or assessment which corresponds with his share therein would be sufficient for him to be qualified if he held it separately.

M. P. A. Hankey.

THE SCHEDULE.

PART I.

MADRAS CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.	No. of Seats.
I.—GENERAL CONSTITUENCIES.		
Madras City ..	Madras as defined in section 3 (9) of the Madras City Municipal Act, 1919, but including Fort St. George.	2
Vizagapatam ..	The Vizagapatam district ..	3

Name of Constituency.	Extent of Constituency.	No. of Seats.
East Godavari ..	The East Godavari district ..	3
West Godavari ..	The West Godavari district ..	2
Kistna ..	The Kistna district ..	2
Guntur. ..	The Guntur district ..	1
Nellore ..	The Nellore district ..	1
Cuddapah ..	The Cuddapah district ..	1
Anantapur ..	The Anantapur district ..	1
Bellary ..	The Bellary district ..	1
Kurnool ..	The Kurnool district ..	1
Chingleput ..	The Chingleput district ..	1
Chittoor ..	The Chittoor district ..	1
North Arcot ..	The North Arcot district ..	1
South Arcot ..	The South Arcot district ..	3
Tanjore ..	The Tanjore district ..	1
Trichinopoly ..	The Trichinopoly district ..	1
Madura ..	The Madura district ..	2
Ramnad ..	The Ramnad district ..	1
Tinnevelly ..	The Tinnevelly district ..	1
Salem ..	The Salem district ..	1
Coimbatore <i>cum</i> the Nilgris. ..	The districts of Coimbatore and the Nilgris ..	1
Malabar ..	The Malabar district ..	2
South Kanara ..	The South Kanara district ..	1

II.—MUHAMMADAN CONSTITUENCIES.

Madras North ..	The districts of Vizagapatam, East Godavari, West Godavari, Kistna, Guntur, Nellore, Cuddapah, Anantapur, Bellary, Kurnool and Chittoor. ..	1
Madras North Central. ..	The districts of Madras, Chingleput, North Arcot and South Arcot ..	1
Madras South Central. ..	The districts of Tanjore and Trichinopoly ..	2
Madras South ..	The districts of Madura, Ramnad, Tinnevelly, Salem, Coimbatore and the Nilgris. ..	1
Madras West Coast ..	The districts of Malabar and South Kanara ..	2

III.—EUROPEAN CONSTITUENCY.

European ..	The whole Province ..	1
Indian Christian ..	The whole Province ..	3

PART II.

BOMBAY CONSTITUENCIES.

IA.—GENERAL CONSTITUENCIES (URBAN).

Bombay City <i>cum</i> Bombay Suburban District ..	The City of Bombay and the Bombay Suburban district excluding the Ambernath petha. ..	4
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IB.—GENERAL CONSTITUENCIES (RURAL).

Ahmedabad <i>cum</i> Kaira. ..	The districts of Ahmedabad and Kaira ..	2
Broach and Panch Mahals <i>cum</i> Surat. ..	The districts of Broach and Panch Mahals and Surat. ..	2
Thana <i>cum</i> Nasik <i>cum</i> Ahmednagar. ..	The districts of Thana, Nasik and Ahmednagar and the Ambernath petha of the Bombay Suburban district. ..	2
East Khandesh <i>cum</i> West Khandesh. ..	The districts of East Khandesh and West Khandesh and the villages belonging to the following Mehwasai Chiefs, namely, (1) the Parvi of Kathi (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) Walvi of Gaohali, (5) Wassawa of Chikhli and (6) the Parvi of Navalpur. ..	2

Name of Constituency.	Extent of Constituency.	No. of Seats.
Poona <i>cum</i> Satara ..	The districts of Poona and Satara ..	2
Sholapur <i>cum</i> Belgaum ..	The districts of Sholapur, Belgaum and Bijapur.	2
<i>cum</i> Bijapur.		
Kolaba <i>cum</i> Ratnagiri.	The districts of Kolaba and Ratnagiri ..	2
Dharwar <i>cum</i> Kanara ..	The districts of Dharwar and Kanara ..	2
IIA.—MUHAMMADAN CONSTITUENCIES (URBAN).		
Bombay City <i>cum</i> Bombay Suburban District.	The City of Bombay and the Bombay Suburban district excluding the Ambernath petha.	2
IIB.—MUHAMMADAN CONSTITUENCIES (RURAL).		
Northern Division ..	The districts of Ahmedabad, Kaira, Broach and Panch Mahalas, Surat and Thana and the Ambernath petha of the Bombay Suburban district.	1
Central Division ..	The districts of Ahmednagar, East Khandesh, West Khandesh, Nasik, Poona, Satara and Sholapur and the villages belonging to the following Mehwasai Chiefs, namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) Walvi of Gaohali, (5) Wassawa of Chikhli, and (6) the Parvi of Navalpur.	1
Southern Division ..	The districts of Belgaum, Bijapur, Dharwar, Kanara, Kolaba and Ratnagiri.	1
III.—EUROPEAN CONSTITUENCY.		
Presidency ..	The whole Province	1

PART III.
BENGAL CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.
IA.—GENERAL CONSTITUENCIES (URBAN).	
Calcutta ..	Calcutta as defined in section 3 (II of the Calcutta Municipal Act, 1934.
Calcutta Suburbs ..	The municipalities and cantonment of the 24-Parganas district and the municipalities of the Hooghly and Howrah districts.
IB.—GENERAL CONSTITUENCIES (RURAL).	
Burdwan Division South-West.	The Bankura and Midnapore districts.
Burdwan Division North-East.	The Burdwan, Birbhum, Hooghly and Howrah districts, excluding the municipalities of the Hooghly and Howrah districts.
Presidency Division ..	The Presidency Division excluding Calcutta and the municipalities and cantonment of the 24-Parganas district.
Rajshahi Division North-West.	The Dinajpur, Jalpaiguri and Darjeeling districts.
Rajshahi Division South-East.	The Rajshahi, Rangpur, Bogra, Pabna and Malda districts.
Dacca Division North ..	The Dacca and Mymensingh districts.
Dacca Division South ..	The Faridpur and Bakarganj districts.
Chittagong Division ..	The Chittagong Division, excluding the Chittagong Hill Tracts.

Name of Constituency.	Extent of Constituency.
IIA.—MUHAMMADAN CONSTITUENCIES (URB.).	
Calcutta and Suburbs ..	Calcutta as defined in section 3 (11) of the Calcutta Municipal Act, 1923, and the Municipalities and cantonment of the 24-Parganas district and the municipalities of the Hooghly and Howrah districts.
IIB.—MUHAMMADAN CONSTITUENCIES (RURAL).	
Burdwan Division ..	The Burdwan Division excluding the Municipalities of the Hooghly and Howrah districts.
Presidency Division South.	The 24-Parganas district (excluding municipal and cantonment areas), and the Jessore and Khulana districts.
Presidency Division North.	The Nadia and Murshidabad districts.
Rajshahi cum Malda ..	The Rajshahi and Malda districts.
Rajshahi Division North Rangpur ..	The Dinajpur, Jalpaiguri and Darjeeling districts.
Bogra cum Pabna ..	The Rangpur district.
Dacca North-West ..	The Bogra and Pabna districts.
Dacca South-East ..	The Sadar and Manikganj sub-divisions of the Dacca district.
Mymensingh West ..	The Narayanganj and Munshiganj sub-divisions of the Dacca District.
Mymensingh East ..	The Jamalpur and Tangai sub divisions of Mymensingh district.
Faridpur ..	The Sadar, Netrakona and Kishoreganj sub-divisions of the Mymensingh district.
Bakarkanj ..	The Faridpur district.
Tippera ..	The Bakarganj district.
Noakhali ..	The Tippera district.
Chittagong ..	The Noakhali district.
III.—EUROPEAN CONSTITUENCY.	
European ..	The whole Province, excluding the Chittakong Hill Tracts.

PART IV.
THE UNITED PROVINCES CONSTITUENCIES.

Name of Constituency.	Extent of Constituency.
IA.—GENERAL CONSTITUENCIES (URBAN).	
Dehra Dun cum Sharanpur cum Meerut cum Moradahad cum Aligarh cum Muttra cities.	The municipalities and cantonments of Dehra Dun Saharanpur, Moradabad and Koil-Aligarh.
Agra cum Farrukhabad cum Allahabad cities.	The municipalities and cantonments of Agra, Farrukhabad cum Fatehgarh and Allahabad.
Jhansi cum Cawnpore cities ..	The municipality and cantonment of Jhansi and the notified area of Garhia Phatak; the municipality and cantonment of Cawnpore, and the Juhi notified area.
Lucknow cum Shahjahanpur cum Bareilly cities.	The municipality and cantonment of Lucknow and the notified area of Charbagh and Alambagh; the municipalities and cantonments of Shahjahanpur and Bareilly.
Benares cum Mirzapur cum Gorakhpur cum Fyzabad cities.	The municipalities and cantonments of Benares and Fyzabad cum Ajodhya; the municipality of Mirzapur cum Bindhyachal, and the municipality, notified area, and railway colony of Gorakhpur.

Name of Constituency.	Extent of Constituency.
IB—GENERAL CONSTITUENCIES (RURAL).	
Saharanpur district ..	The Saharanpur district excluding the municipality of Saharanpur.
Muzaffarnagar district ..	The Muzaffarnagar district.
Bulandshahr district ..	The Bulandshahr district.
Meerut district ..	The Meerut district, excluding the municipality and cantonment of Meerut.
Moradabad district ..	The Moradabad district, excluding the municipality of Moradabad.
Budaun and Bareilly districts ..	The Budaun district and the Bareilly district, excluding the municipality and cantonment of Bareilly.
Pilibhit and Shahjahanpur districts ..	The Pilibhit district and the Shahjahanpur district, excluding the municipality and cantonment of Shahjahanpur.
Dehra Dun and Bijnor districts.	The Dehra Dun district (excluding the municipality and cantonment of Dehra Dun), and the Bijnor district.
Farrukhabad and Etawah districts.	The Farrukhabad district (excluding the municipality and cantonment of Farrukhabad <i>cum</i> Fatehgarh), and the Etawah district.
Cawnpore district	The Cawnpore district (excluding the municipality and cantonment of Cawnpore and the Juhri notified area).
Allahabad district ..	The Allahabad district, excluding the municipality and cantonment of Allahabad.
Fatehpur and Banda districts ..	The Fatehpur and Banda districts.
Hamirpur, Jhansi and Jalaun districts.	The Hamirpur district; the Jhansi district (excluding the municipality and cantonment of Jhansi and the notified area of Garhia Phatak), and the Jalaun district.
Aligarh district ..	The Aligarh district, excluding the municipality of Koil-Aligarh.
Muttra and Agra districts ..	The Muttra district (excluding the municipality and cantonment of Muttra), and the Agra district excluding the municipality and cantonment of Agra)
Mainpuri and Etah districts ..	The Mainpuri and Etah districts.
Naini Tal, Almora and Garhwal districts.	The Naini Tal, Almora and Garhwal districts.
Gorakhpur district ..	The Gorakhpur district, excluding the municipality, notified area and railway colony of Gorakhpur.
Basti district ..	The Basti district.
Azamgarh and Ballia districts ..	The Azamgarh and Ballia districts.
Jaunpur and Mirzapur districts.	The Jaunpur district and the Mirzapur district, excluding the municipality of Mirzapur <i>cum</i> Bindhyachal.
Benares and Ghazipur districts ..	The Benares district (excluding the municipality and cantonment of Benares), and the Ghazipur district.
Rae Bareli district ..	The Rae Bareli district.
Lucknow and Unao districts ..	The Lucknow district (excluding the municipality and cantonment of Lucknow and the Charbagh and Alambagh notified area), and the Unao district.
Sitapur district ..	The Sitapur district.
Hardoi and Kheri districts ..	The Hardoi and Kheri districts.
Fyzabad and Bara Banki districts.	The Fyzabad district (excluding the municipality and cantonment of Fyzabad- <i>cum</i> -Ajodhya), and the Bara Banki district.
Bahraich and Gonda districts ..	The Bahraich and Gonda districts.
Sultanpur and Partabgarh districts.	The Sultanpur and Partabgarh districts.

Name of Constituency.	Extent of Constituency.
IIA.—MUHAMMADAN CONSTITUENCIES (URBAN).	
Dehra Dun <i>cum</i> Saharanpur <i>cum</i> Meerut <i>cum</i> Moradabad <i>cum</i> Bareilly <i>cum</i> Shahjahanpur cities.	The municipalities and cantonments of Dehra Dun, Meerut, Bareilly and Shahjahanpur, and the municipalities of Saharanpur and Moradabad.
Aligarh <i>cum</i> Muttra <i>cum</i> Agra <i>cum</i> Farrukhabad <i>cum</i> Jhansi cities.	The municipality of Koil-Aligarh, the municipalities and cantonments of Muttra, Agra, and Farrukhabad <i>cum</i> Fatehgarh; the municipality and cantonment of Jhansi, and the notified area of Garhia Phatak.
Allahabad <i>cum</i> Cawnpore cities.	The municipalities and cantonments of Allahabad and Cawnpore, and the Juhri notified area.
Lucknow City ..	The municipality and cantonment of Lucknow, and the Charbagh and Alambagh notified area.
Benares <i>cum</i> Mirzapur <i>cum</i> Gorakhpur <i>cum</i> Fyzabad cities	The municipalities and cantonments of Benares, and Fyzabad <i>cum</i> Ajodhya; the municipality of Mirzapur <i>cum</i> Bindhyachal, and the municipality, notified area, and railway colony of Gorakhpur.
IIB.—MUHAMMADAN CONSTITUENCIES (RURAL).	
Dehra Dun, Saharanpur, Muzaffarnagar and Meerut districts.	The Dehra Dun district, excluding the municipality and the cantonment of Dehra Dun; the Saharanpur district, excluding the municipality of Saharanpur; the Muzaffarnagar district, and the Meerut district, excluding the municipality and cantonment of Meerut.
Bulandshahr district ..	The Bulandshahr district.
Aligarh, Muttra, Agra, Mainpuri, Etah, Farrukhabad, Etawah and Cawnpore districts.	The Aligarh district, excluding the municipality of Koil-Aligarh; the Muttra district, excluding the Municipality and cantonment of Muttra; the Agra district, excluding the municipality and cantonment of Agra; the Mainpuri, Etah and Etawah districts; the Farrukhabad district, excluding the municipality and cantonment of Farrukhabad <i>cum</i> Fatehgarh, and the Cawnpore district, excluding the municipality and cantonment of Cawnpore and the Juhri notified area.
Fatehpur, Allahabad, Banda, Hamirpur, Jhansi and Jalaun districts.	The Fatehpur, Banda, Hamirpur and Jalaun districts; the Allahabad district, excluding the municipality and cantonment of Allahabad, and the Jhansi district, excluding the municipality and cantonment of Jhansi and the notified area of Garhia Phatak.
Bijnor, Moradabad, Bareilly and Garhwal districts.	The Bijnor and Garhwal districts; the Moradabad district, excluding the municipality of Moradabad, and the Bareilly district, excluding the municipality and cantonment of Bareilly.
Budaun, Shahjahanpur, Pilibhit, Naini Tal and Almora districts.	The Budaun, Pilibhit, Naini Tal and Almora districts; and the Shahjahanpur district, excluding the municipality and cantonment of Shahjahanpur.
Benares, Mirzapur, Jaunpur, Ghazipur and Ballia districts.	The Benares district, excluding the municipality and cantonment of Benares; the Mirzapur district, excluding the Municipality of Mirzapur <i>cum</i> Bindhyachal; the Jaunpur, Ghazipur and Ballia districts.
Gorakhpur, Basti and Azamgarh districts.	The Gorakhpur district, excluding the municipality, notified area, and railway colony of Gorakhpur; the Basti and Azamgarh districts.
Lucknow, Unao and Rae Bareilly districts.	The Lucknow district, excluding the municipality and cantonment of Lucknow and the Charbagh and Alambagh notified area; the Unao and Rae Bareilly districts.

Name of Constituency.	Extent of Constituency.
Sitapur, Hardoi and Kheri districts.	The Sitapur, Hardoi and Kheri districts.
Fyzabad, Gonda, Bahraich, Sultanpur and Partabgarh districts.	The Fyzabad district, excluding the municipality, and cantonment of Fyzabad-cum-Ajodhya; the Gonda, Bahraich, Sultanpur and Partabgarh districts.
Bara Banki district	.. The Bara Banki district.
United Provinces	III.—EUROPEAN CONSTITUENCY. .. The whole of the Province.

PART V.

BIHAR CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

North Patna Division	.. The districts of Patna and Shahabad.
Gaya	.. The district of Gaya.
Saran cum Champaran	.. The districts of Saran and Champaran.
Muzaffarpur	.. The district of Muzaffarpur.
Darbhanga	.. The district of Darbhanga.
Monghyr cum Santal Parganas.	.. The districts of Monghyr and the Santal Parganas.
Bhagalpur cum Purnea	.. The districts of Bhagalpur and Purnea.
Hazaribagh cum Manbhum	.. The districts of Hazaribagh and Manbhum.
Ranchi and Palamau cum Singhbhum.	.. The districts of Ranchi, Palamau and Singhbhum.

II.—MUHAMMADAN CONSTITUENCIES.

Patna cum Shahabad	.. The districts of Patna and Shahabad.
Gaya cum Chota Nagpur Division.	.. The district of Gaya and the Chota Nagpur Division.
Tirhut Division	.. The Tirhut Division.
Bhagalpur Division	.. The Bhagalpur Division.

III.—EUROPEAN CONSTITUENCY.

Bihar	.. The whole Province.
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PART VI.

ASSAM CONSTITUENCIES.

I.—GENERAL CONSTITUENCIES.

Goalpara	.. The Goalpara district and the three plains mauzas of Mahendraganj, Rangapani and Fulbari in the Garo Hills district.
Kamrup	.. The Kamrup district.
Darrang	.. The Darrang district.
Nowgong	.. The Nowgong district (excluding all areas in the Mikir Hills except the Lumding Kheraj block).
Sibsagar	.. The Sibsaigar district (excluding all areas in the Mikir Hills except Barpathar and Sarupathar mauzas).
Lakhimpur	.. The Lakhimpur district (excluding the Lakhimpur Frontier Tract).
Cachar	.. The Cachar district (excluding the North Cachar Hills).
Hills	.. The Garo Hills (excluding the three plains mauzas of Mahendraganj, Rangapani and Fulbari); the British territory of the Khasi and Jaintia Hills, and the Mikir Hills (excluding the Barpathar and Sarupathar mauzas and the Lumding Kheraj block).

Name of Constituency.	Extent of Constituency.
Sylhet (West)	.. The Habiganj and Sunamganj subdivisions, and the Maulvi Bazar and Srimangal thanas of the South Sylhet sub-division.
Sylhet (East)	.. The North Sylhet and Karimganj sub-divisions and the Kulaura, Rajnagar and Kamalganj thanas of the South Sylhet sub-division.
II.—MUHAMMADAN CONSTITUENCIES.	
Lower Assam Valley	.. The districts of Goalpara, Kamrup, Darrang: the British territory of the Khasi and Jaintia Hills, and the Garo Hills.
Upper Assam Valley	.. The districts of Nowgong, Sibsagar and Lakhimpur (excluding the Lakhimpur Frontier Tract).
Surma Valley (East)	.. The Cachar district (excluding the North Cachar Hills), and the Karimganj sub-division of the Sylhet district.
Surma Valley (Central)	.. The North Sylhet sub-division and the Kulaura thana of the South Sylhet sub-division.
Surma Valley (North-West)	.. The Sunamganj sub-division and the Ajmiriganj and Nabiganj thanas of the Habiganj sub-division.
Surma Valley (South-West)	.. The Habiganj sub-division (excluding the Ajmiriganj and Nabiganj thanas) and the South Sylhet sub-division (excluding the Kulaura thana).
III.—EUROPEAN CONSTITUENCIES.	
Assam Valley	.. The districts of Goalpara, Kamrup, Nowgong, Darrang, Sibsagar, and Lakhimpur (excluding the Lakhimpur Frontier Tract).
Surma Valley	.. The districts of Sylhet and Cachar (excluding the North Cachar Hills), the Garo Hills and the British territory of the Khasi and Jaintia Hills.

(7)

**THE GOVERNMENT OF INDIA (DISTRIBUTION OF
REVENUES) ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,

The 3rd day of July, 1936.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by sub-section (1) of section one hundred and thirty-eight of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act") it is provided that taxes on income other than agricultural income shall be levied and collected by the Federation, but that (subject to the provisions of the said sub-section with respect to surcharges for Federal purposes) a percentage to be prescribed by His Majesty in Council of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed by His Majesty in Council:

AND WHEREAS by sub-section (2) of the said section one hundred and thirty-eight the Federation is, notwithstanding anything in sub-section (1) of that section, authorised to retain out of the moneys assigned by the said sub-section (1) to Provinces and States—

- (a) in each year of a period to be prescribed by His Majesty in Council such sum as may be so prescribed;
- (b) in each year of a further period to be so prescribed a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction.

AND WHEREAS by sub-section (2) of section one hundred and forty of the Act it is provided that one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein:

AND WHEREAS by section one hundred and forty-two of the Act it is provided that such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance:

AND WHEREAS by virtue of the provisions of Part XIII of the Act references in the sub-sections and sections aforesaid to the Federation are, as respects the period elapsing between the commencement of Part III of the Act and the establishment of the Federation, to be construed as references to the Governor-General in Council:

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AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

Introductory.

1. This Order may be cited as "THE GOVERNMENT OF INDIA (DISTRIBUTION OF REVENUES) ORDER, 1936."

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. As respects the period elapsing between the commencement of Part III of the Act and the establishment of the Federation, references in this Order to the Federation shall be construed as references to the Governor-General in Council.

4. Any reference in this Order to a year shall be construed as a reference to a period of twelve months beginning on the first day of April.

Taxes on income.

5. The percentage which under sub-section (1) of section one hundred and thirty-eight of the Act is to be prescribed by His Majesty in Council shall be fifty per cent., and the sums falling to be distributed under that sub-section in any year among the Provinces shall be distributed as follows:—

	<i>Per cent.</i>
Madras	15
Bombay	20
Bengal	20
The United Provinces	15
The Punjab	8
Bihar	10
The Central Provinces and Berar	5
Assam	2
The North-West Frontier Province	1
Orissa	2
Sind	2

6. (1) The first of the periods to be prescribed by His Majesty in Council under sub-section (2) of the said section one hundred and thirty-eight shall be five years from the commencement of Part III of the Act, and the sum to be retained by the Federation under that sub-section shall, in each of those years, be either the whole of the moneys assigned by sub-section (1) of the said section to Provinces and States, or such part thereof as will together with—

(a) the Federation's share of the divisible net proceeds of the taxes on income for that year; and

(b) the sum, if any, to be brought into account by the Federation under sub-paragraph (3) of this paragraph, amount to thirteen crores of rupees, whichever is the less.

(2) In this paragraph, "the divisible net proceeds of the taxes on income" means the net proceeds of the taxes on income to which the said section one hundred and thirty-eight relates, except in so far as they represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, or proceeds of any surcharge for Federal purposes.

(3) The sum, if any, to be brought into account by the Federation in any year for the purposes of sub-paragraph (1) of this paragraph shall be a sum to be ascertained by applying to the accounts of the railways, with such alterations in accounts as are necessitated by the separation of Burma, the principles laid down in the Resolution of the Legislative Assembly of the twentieth day of September nineteen hundred and twenty-four, and ascertaining in accordance with those principles what sum, if any, would be the net amount payable for that year under clauses (2) and (3) of that Resolution to general revenues out of the net receipt of the railways:

Provided that for the purpose of ascertaining the net amount so payable to general revenues, borrowings from the depreciation fund before the commencement of Part III of the Act shall be deemed not to be repayable, and arrears of contributions to general revenues for any year before the commencement of the said Part III shall be deemed not to be payable.

7. The second period to be prescribed by His Majesty in Council under sub-section (2) of the said section one hundred and thirty-eight shall be five years from the expiration of the first period prescribed thereunder.

Jute Export Duty.

8. The proportion of the net proceeds in each year of any export duty on jute or jute products which under sub-section (2) of section one hundred and forty of the Act is to be assigned to the Provinces or Federated States in which jute is grown shall be sixty-two and one-half per cent.

Grants-in-Aid to Certain Provinces.

9. There shall be charged on the revenues of the Federation as grants-in-aid of the revenues of the Provinces mentioned in the Schedule to this Order the sums specified in that Schedule in relation to those Provinces respectively, in each of the years so specified.

M. P. A. Hankey.

SCHEDULE.

GRANTS TO CERTAIN PROVINCES.

1. The United Provinces:
25 lakhs of rupees in each year of the first five years from the commencement of Part III of the Act.
2. Assam:
30 lakhs of rupees in each year.
3. The North-West Frontier Province:
100 lakhs of rupees in each year.
4. Orissa:
In the first year after the commencement of Part III of the Act, 47 lakhs of rupees; in each of the next four succeeding years, 43 lakhs of rupees; and in every subsequent year, 40 lakhs of rupees.
5. Sind:
In the first year after the commencement of Part III of the Act, 110 lakhs of rupees; in each of the next nine years, 105 lakhs of rupees; in each of the next twenty years, 80 lakhs of rupees; in each of the next five years, 65 lakhs of rupees; in each of the next five years, 60 lakhs of rupees; and in each of the next five years, 55 lakhs of rupees.

(8)

**THE GOVERNMENT OF INDIA (PROVINCIAL ELECTIONS).
(CORRUPT PRACTICES AND ELECTION PETITIONS)
ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,
The 3rd day of July, 1936.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-one of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act") His Majesty in Council is empowered to make provision with respect to certain matters connected with elections under the Act:

AND WHEREAS by sub-section (1) of section sixty-nine of the Act His Majesty in Council is empowered to declare certain offences and practices to be offences and practices involving disqualification for membership of Provincial Legislatures and to fix the periods for which the disqualifications are to operate:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered, as follows:—

PART I.

INTRODUCTORY.

1. This Order may be cited as "THE GOVERNMENT OF INDIA (PROVINCIAL ELECTIONS) (CORRUPT PRACTICES AND ELECTION PETITIONS) ORDER, 1936."

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. (1) In this Order, except where it is otherwise expressly provided or the context otherwise requires—

"election" means an election to fill a seat or seats in either Chamber of a Provincial Legislature;

"prescribed" means prescribed by Act of the Provincial Legislature or by Rules;

"Rules" means rules made under paragraph twenty of the Fifth Schedule to the Act;

"sign" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;

"oath" includes affirmation.

(2) The provisions of Parts II and III of this Order shall, in relation to constituencies in which seats are reserved for candidates of any particular class, or in which the final voting is by members of an electoral college previously constituted for that purpose, have effect with such exceptions and subject to such adaptations and modifications as may be prescribed, but subject as aforesaid, any primary election for the purpose of electing candidates for reserved seats, or of constituting any such electoral college, shall be deemed to be part of the election of persons to fill the seats to be filled in the constituency.

(3) Where under any of the provisions of this Order anything is to be prescribed, different provision may be made for different cases or classes of cases.

(4) Any reference in this Order to any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted.

(5) Anything which under the provisions of the Act or of this Order is required or authorised to be done by, to or before the Governor of a Province in connection with any matters to which this Order relates (whether or not the Governor is to act in his discretion or to exercise his individual judgment) shall before the commencement of Part III of the Act be done by, to or before the Governor in Council or, in the case of Sind or Orissa, the Governor.

PART II.

ELECTION AGENTS AND EXPENSES.

1. Every person nominated as a candidate at an election shall at the prescribed time and in the prescribed manner appoint either himself or some one other person to be his election agent.

2. No person shall be appointed an election agent who is disqualified from being an election agent under the subsequent provisions of this Order.

3. (1) Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer.

(2) In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of the next but one succeeding paragraph, the candidate shall appoint forthwith either himself or some other person to be his election agent, and shall give notice in writing of the appointment to the returning officer.

4. Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with the election as may be prescribed.

5. (1) Within the prescribed time after every election there shall be lodged with the returning officer in respect of each person who has been nominated as a candidate a return of the election expenses of that person signed both by him and his election agent.

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations

in the prescribed form by the candidate and his election agent made on oath before a magistrate.

(3) Notwithstanding anything in this paragraph, where a candidate is owing to absence from India unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only, and the candidate shall within fourteen days after his return to India cause to be lodged with the returning officer a declaration made on oath before a magistrate in such form as may be prescribed.

6. In each Province provision shall be made, by an Act of the Provincial Legislature or by Rules, fixing the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections:

Provided that no provision need be so made in any Province with respect to any election held before the expiration of two years from the commencement of Part III of the Act.

7. Except so far as may be prescribed, this Part of this Order does not apply to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.

PART III.

DECISION OF DOUBTS AND DISPUTES AS TO THE VALIDITY OF AN ELECTION AND DISQUALIFICATIONS FOR CORRUPT PRACTICES.

1. In this Part of this Order and in the First Schedule to this Order, except where it is otherwise expressly provided or the context otherwise requires—

“agent” includes an election agent and any person who, on the trial of an election petition, is held by the Commissioners to have acted as an agent in connection with the election with the knowledge or consent of the candidate;

“candidate” means a person who has been or claims to have been duly nominated as a candidate at any election, and a candidate who, with the election in prospect, has held himself out as a prospective candidate, shall be deemed to have been a candidate as from the time when he began so to hold himself out;

“electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election;

“returned candidate” means a candidate whose name has been published in the prescribed manner as duly elected;

“corrupt practice”, in relation to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council, means one of the practices specified in Parts I and II of the First Schedule to this Order, and in relation to any other election, means one of the practices specified in Parts I, II and III of that Schedule.

2. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part of this Order.

3. (1) An election petition against any returned candidate may be presented to the Governor—

- (a) by any candidate or elector on any ground;
- (b) by an officer empowered in that behalf by the Governor, exercising his individual judgment, on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed.

In this paragraph, "elector," in relation to a commerce and industry, mining or planting constituency, includes all the persons included in the electoral roll as the nominees of any body, notwithstanding that only one of them is entitled to vote.

(2) A petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, but such a declaration shall only be claimed on one or other of the following grounds—

- (a) that in fact the petitioner received a majority of the valid votes; or
- (b) that but for votes obtained for the returned candidate by corrupt practices, the petitioner would have obtained a majority of the valid votes.

4. (1) Unless the Governor, exercising his individual judgment, dismisses a petition for non-compliance with the prescribed requirements, he shall, exercising his individual judgment, appoint as Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, judges of a High Court, and shall appoint one of them to be the President:

Provided that nothing in this sub-paragraph shall be deemed to prevent the appointment of the President of a Commission before the other Commissioners are appointed.

(2) Subject to the provisions of this paragraph, all applications and proceedings in connection with the petition shall be dealt with by, and carried on by or before, the Commissioners.

(3) Where in respect of an election in a constituency more petitions than one are presented, the Governor shall refer all those petitions to the same Commissioners, who may at their discretion inquire into the petitions either separately or in one or more groups, as they think fit.

(4) If the services of any Commissioner are not available for the purposes of the inquiry or if during the course of the inquiry any Commissioner is unable to continue to attend thereat, the Governor, exercising his individual judgment, shall appoint another Commissioner and the inquiry shall recommence before the Commission as so reconstituted:

Provided that the Commissioners may direct that any evidence already recorded shall remain upon record, and in that case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) References to the Commissioners in this Part of this Order shall, as respects any matter to be done before the commencement of the inquiry, be deemed to be references to the President.

5. When at an inquiry into an election petition the Commissioners so order, the Advocate-General of the Province, or some person acting under

his instructions, shall attend and shall take such part therein as the Commissioners may direct.

6. Subject to the provisions of this Part of this Order, Acts of the Provincial Legislature and Rules may regulate the form of election petitions, the time and manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, may require security to be given for costs and may authorise the Governor, exercising his individual judgment, to dismiss petitions for non-compliance with the prescribed requirements.

7. (1) Subject to the provisions of this paragraph, if in the opinion of the Commissioners—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt practice; or
- (b) any corrupt practice specified in Part I of the First Schedule to this Order has been committed in the interests of a returned candidate; or
- (c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or by any non-compliance with the provisions of the Act or of this Order, or of any Act of the Provincial Legislature or Rules relating to the election, or by any mistake in the use of any prescribed form; or
- (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed,

the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in Part I of the First Schedule to this Order, but further report that the candidate has satisfied them that—

- (a) no corrupt practice was committed at the election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;
- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election;
- (c) the corrupt practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and
- (d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Commissioners may find that the election of the candidate is not void.

(3) If a person (not being entitled so to do) votes more than once at the same election, all his votes shall be deemed for the purposes of this paragraph to be void.

8. (1) At the conclusion of the inquiry the Commissioners shall report whether the returned candidate, or any person who has lodged a petition and claimed a seat, has been duly elected and in so reporting shall have regard to the provisions of the last preceding paragraph.

(2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom the cost should be paid, and any such recommendation may include a recommendation for the payment of costs to the Advocate-General of the Province or a person acting under his instructions attending the trial in pursuance of an order of the Commissioners.

(3) The report shall be signed by all the Commissioners and the Commissioners shall forthwith forward their report to the Governor, who on receipt thereof shall issue orders in accordance with the report and publish the report in the Government Gazette of the Province, and the orders of the Governor shall be final.

9. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail and their report shall be expressed in terms of the views of the majority.

10. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report—

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of that corrupt practice; and
- (b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the Commissioners may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under paragraph two to five of Part IV of this Order:

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

PART IV.

DISQUALIFICATIONS.

1. The offences and practices specified, in relation to certain elections, in the Second Schedule to this Order shall, for the periods respectively specified in relation to those offences and practices in that Schedule, entail disqualification for membership of any Provincial Legislature.

2. If any person—

- (a) is, in connection with an election to a Provincial Legislature, the Coorg Legislative Council or a local body in British

India, convicted of an offence under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months; or

- (b) is after an inquiry under Part III of this Order reported as guilty of any such corrupt practice as is specified in Part I or Part II of the first Schedule to this Order,

he shall, for a period of six years from the date of the conviction or report, be disqualified for voting at any election.

3. If, in relation to any election (other than an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council), any person is after such an inquiry as aforesaid reported as guilty of any such corrupt practice as is specified in Part III of the said Schedule he shall be disqualified for voting at any election for a period of four years from the date of the report.

4. Where under either of the two last preceding paragraphs a person is, in connection with an election in a commerce and industry, mining or planting constituency, disqualified for voting for any period, then, if that person was at the date of the election either—

- (a) included in the electoral roll for the constituency as the nominee of a firm, Hindu joint family or corporation entitled to nominate persons for inclusion therein; or
(b) a member of any such firm or Hindu joint family, or a director, managing agent or manager of any such corporation, or a person authorised to sign the name of any such firm, Hindu joint family or corporation in the ordinary course of its business,

the firm, family or corporation shall, for the like period, be disqualified from nominating persons for inclusion in the electoral roll of any commerce and industry, mining or planting constituency.

5. If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which Part II of this Order applies, or if such a return is found, either by Commissioners holding an inquiry into the election or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which a return was required to be lodged.

6. Every person shall be disqualified for voting at any election who is for the time being disqualified for voting at elections to the Federal Legislature by reason of misconduct in connection with an election to that Legislature, or by reason of a default in making, or of the falsity of, any return of election expenses at any election to that Legislature.

References in this paragraph to the Federal Legislature shall until the establishment of the Federation be construed as references to the Indian Legislature.

7. Any person who is for the time being disqualified under the foregoing provisions of this Part of this Order for being a member of a Provincial Legislature, or for voting at elections, shall, so long as the disqualification exists, also be disqualified for being an election agent at any election.

8. Any disqualification under paragraphs two to five of this Part of this Order arising in connection with an election to the Legislature of, or to a local body in, a Province may be removed by the Governor of that

Province in his discretion, and any other disqualification under the said paragraph two may be removed, before the establishment of the Federation, by the Governor-General in Council, and, after the establishment of the Federation, by the Governor-General in his discretion.

9. In paragraph one of this Part of this Order, "elections" includes all the elections referred to in the Second Schedule to this Order, but save as aforesaid, the references in this Part of this Order to elections, other than express references to elections of any other kind, shall be construed as references to elections as defined in paragraph three of Part I of this Order.

M. P. A. Hankey.

FIRST SCHEDULE.

CORRUPT PRACTICES.

PART I.

1. Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
- (b) an elector to vote or refrain from voting at an election, or as a reward to—
- (i) a person for having so stood or not stood, or for having withdrawn his candidature; or
- (ii) an elector for having voted or refrained from voting.

For the purposes of this paragraph the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the return of election expenses prescribed by this Order.

2. Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right:

Provided that—

- (a) without prejudice to the generality of the provisions of this paragraph—any such person as is referred to therein who—
 - (i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; or
 - (ii) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,
- shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph;
- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this paragraph.

3. The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

4. The removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent.

5. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

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6. The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Order or of any Act of the Provincial Legislature or Rules.

PART II.

1. Any act specified in Part I of this Schedule, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

2. The application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

3. The receipt of, or agreement to receive, any gratification whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

For the purposes of this paragraph the term "gratification" has the same meaning as it has for the purposes of paragraph one of Part I of this Schedule.

4. The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return.

PART III.

1. The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

2. The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

3. The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

SECOND SCHEDULE.

DISQUALIFICATIONS FOR MEMBERSHIP OF PROVINCIAL LEGISLATURES.

Elections.	Offence or Corrupt Practice	Period of Disqualification.
Elections to which Chapter IX-A of the Indian Penal Code applies.	Offences under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months.	Six years from the date of conviction.
Elections as defined in paragraph three of Part I of this Order.	Corrupt practices specified in Parts I and II of the First Schedule to this Order	Six years from the date of the report of the tribunal holding the inquiry.
Elections as defined in paragraph three of Part I of this Order, other than elections by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.	Corrupt practices specified in Part III of the First Schedule to this Order.	Four years from the date of the report of the tribunal holding the inquiry.

Elections.	Offence or Corrupt Practice	Period of Disqualification.
Elections to Federal Legislature.	Corrupt practices as defined in any Order under the Act relating to such elections.	The period for which the corrupt practice entails disqualification for membership of Federal Legislature.
Elections under the Government of India Act.	Any corrupt practice within the meaning of the Electoral Rules under the Government of India Act relating to the election in question.	Such period, commencing on the date of the report of the Commissioners under the Electoral Rules relating to the election in question, as in the maximum period of disqualification specified in those Rules for inclusion in electoral rolls thereunder.

(9)

**THE GOVERNMENT OF INDIA (COMMENCEMENT AND
TRANSITORY PROVISIONS) ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,

The 3rd day of July, 1936.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section three hundred and twenty of the Government of India Act, 1935 (hereafter in this Order referred to as "the new Act") it is provided that the provisions of that Act other than those of Part II thereof shall, subject to any express provision to the contrary, come into force on a date to be appointed by His Majesty in Council for the commencement of Part III thereof, but His Majesty in Council is empowered to fix an earlier or later date for the coming into operation, either generally or for particular purposes, of any particular provisions of the Act:

AND WHEREAS by section three hundred and ten of the new Act His Majesty in Council is empowered, for the purpose of facilitating the transition to the provisions of the new Act from the provisions of the Government of India Act (hereafter in this Order referred to as "the old Act"), to direct that the new Act and any provisions of the old Act still in force shall, during a limited period, have effect subject to adaptations and modifications, to make with respect to a limited period temporary provision for ensuring that during and after the transition there are available to all Governments in India sufficient revenues to enable the business of those Governments to be carried on, and to make other temporary provisions for the purposes of removing any difficulties arising in relation to the transition:

AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the new Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (COMMENCEMENT AND TRANSITORY PROVISIONS) ORDER, 1936."

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. (1) The provisions of the new Act, other than those of Part II thereof and other than those referred to in the next succeeding sub-paragraph, shall, subject to the provisions of that Act and of this and any other Order in Council made thereunder, come into force on the first day of April, nineteen hundred and thirty-seven, and accordingly that date is the

date referred to in that Act as the date of the commencement of Part III thereof.

(2) The provisions of Part VIII of the new Act, of Chapter I of Part IX of that Act, and of the Eighth Schedule to that Act, shall come into force on such dates as His Majesty in Council may hereafter appoint, and section two hundred and thirty-two of that Act shall not come into force until the establishment of the Federation.

(3) In this paragraph the reference to Part II of the new Act shall be deemed to include a reference to the First and Second Schedules, thereto, and to so much of the Third Schedule thereto as relates to the Governor-General.

4. (1) So far as may be necessary for the purpose of enabling the members of all the Provincial Legislatures to be duly chosen in time for those Legislatures to be ready to meet by the commencement of Part III of the new Act—

- (a) the provisions of Parts III and XII of, and of the Fifth and Sixth Schedules to, the new Act shall (so far as those provisions are not already in force) come into force on the date of the making of this Order; and
- (b) any Orders in Council or rules made under the new Act with respect to those Legislatures, whether before or after the making of this Order, shall come, or, as the case may be, be deemed to have come, into operation at the date of the making of the Orders or rules in question, and shall authorise or, as the case may be, be deemed to have authorised the giving of any notice or direction, and the taking of any other step, given or taken in anticipation of the making or coming into force of the Orders or rules in question.

(2) References in sub-section (2) of section sixty-eight of the new Act to the Federal Legislature shall during the period before the commencement of Part III of that Act (as well as during the period in which Part XIII of that Act is in force) be construed as references to the Indian Legislature.

(3) For the avoidance of doubt it is hereby declared that a person who has been chosen to be a member of the Legislative Assembly of Bengal or of the Legislative Assembly of Bihar may, before the commencement of Part III of the new Act, take part in an election to choose members of the Legislative Council of the Province notwithstanding that he has not taken his seat or taken the oath prescribed by section sixty-seven of the new Act.

5. (1) The Governor of each Province may in his discretion from time to time authorise such expenditure from the revenues of the Province as he deems necessary to enable the business of the Provincial Government to be carried on between the commencement of Part III of the new Act and the date on which a schedule of authorised expenditure is authenticated in accordance with the provisions of section eighty of the new Act, or until the expiration of six months from the commencement of Part III of the new Act, whichever first occurs:

Provided that, except with the consent of the Governor-General in his discretion, the expenditure so authorised shall not exceed one-half of the total expenditure from the revenues of the Province in the previous financial year as shown in the revised estimates for that year.

(2) The expenditure authorised under the preceding sub-paragraph shall be included under the appropriate heads in the first estimates of expenditure laid before the Provincial Legislature under section seventy-eight of the new Act, and the provisions of that section and of sections seventy-nine and eighty of that Act shall apply in relation thereto:

Provided that any expenditure so authorised shall, so far as regards moneys paid and liabilities incurred before the date on which a schedule of authorised expenditure is authenticated in accordance with the provisions of the said section eighty, be deemed for all purposes of the new Act to have been duly authorised notwithstanding that it may not be included in the Schedule so authenticated.

(3) The following provisions of this sub-paragraph shall apply in relation to any expenditure incurred from the revenues of a Province in respect of a period before the commencement of Part III of the new Act in excess of the expenditure authorised in respect of that period under the relevant provisions of the old Act—

- (a) the Governor of the Province may, in his discretion, at any time before the expiration of six months from the commencement of Part III of the new Act declare any such expenditure to have been duly authorised; and
- (b) in so far as no such declaration has been made, the provisions of section eighty-one of the new Act (which relates to supplementary statements of expenditure) shall apply in relation to any such expenditure as they apply in relation to expenditure in respect of financial years after the commencement of the said Part III.

6. The Governor of each Province in his discretion may by public notification continue for a period not exceeding twelve months from the commencement of Part III of the new Act any taxation which was being levied for the purposes of the Province and would otherwise expire, without prejudice, however, to the powers of the Provincial Legislature as to the imposition and remission of taxation.

7. Before the first general elections are held to choose the members of the Legislative Assembly of any Province, the Governor shall prorogue the existing Legislative Council, if any, of that Province until the first day of April, nineteen hundred and thirty-seven, and on the commencement of Part III of the new Act the Council shall automatically be dissolved.

The reference in this paragraph to elections held to choose members of a Legislative Assembly does not include a reference to primary elections held to choose candidates for seats in that Assembly.

8. On the commencement of Part III of the new Act, the members of the Council of State and the Legislative Assembly of the Indian Legislature who have been elected or nominated to represent Burma or Burma constituencies shall vacate their seats.

9. (1) Acts of the Indian Legislature made before the commencement of Part III of the new Act (including Acts made under section sixty-seven B of the old Act) may, notwithstanding the repeal of the old Act and notwithstanding anything in section two hundred and ninety-two of the new Act, be validly made so as first to come into force at, or at any time after, the commencement of Part III of the new Act, but any Act which is valid only by virtue of this paragraph shall, except as respects things done or omitted to be done before its expiration cease to have effect on the

expiration of twelve months from the commencement of Part III of the new Act:

Provided that—

- (a) any such Act may be continued, repealed or amended by any Legislature or authority having for the time being power to legislate in relation to the subject-matter of the Act;
- (b) any such Act shall have effect as part of the law of British India, but not as part of the law of Burma;
- (c) if and in so far as any such Act is inconsistent with the new Act, or any Order in Council made thereunder (whether made before or after the Act of the Indian Legislature) the new Act, or the Order in Council, as the case may be, shall prevail.

(2) This paragraph shall apply in relation to regulations and ordinances made under sections seventy-one and seventy-two of the old Act as it applies in relation to Acts of the Indian Legislature.

10. Where any functions of a Local Government under any existing Indian law are transferred by or under the new Act to the Federal Government, the Provincial Government shall, nevertheless, continue to perform those functions for such period, if any, not exceeding one year from the commencement of Part III of the new Act, as the Governor-General may fix, and shall, in the exercise thereof, be subject to the like control by the Governor-General in Council as immediately before the commencement of the said Part III.

11. Section sixteen of the new Act (which authorises the appointment of an Advocate-General for the Federation) and so much of sub-section (3) of section (thirty-three thereof as declares his salary and allowances to be charged on the revenues of the Federation shall come into force on the commencement of Part III of the new Act.

12. So much of Section three hundred and twenty-one of, and of the Tenth Schedule to, the new Act as repeals sub-section (2) of Section sixty-seven of the old Act down to the words "the revenues of India" shall not take effect until the establishment of the Federation.

13. (1) The provisions of this paragraph shall have effect with respect to the period before the commencement of Part III of the new Act.

(2) The accounts for the said period which, but for the commencement of the said Part III would have been audited in India, shall be audited under Part VII of the new Act as if they were accounts of the Governor-General in Council, but the Auditor-General of India shall transmit to the Secretary of State such information as is necessary to enable him, properly to perform the duties mentioned in the subsequent provisions of this paragraph.

(3) The accounts for the said period which, but for the commencement of Part III of the new Act, would have been audited in England by the auditor of the accounts of the Secretary of State in Council shall be audited by the Auditor of Indian Home Accounts, who shall have the like powers and perform the same duties in relation thereto as the auditor of the accounts of the Secretary of State in Council would have had if the new Act had not been passed, except that anything to be done by or to the Secretary of State in Council shall be done by or to the Secretary of State; and sub-section (3) of section twenty-seven of the old Act and paragraph nine of the Order in Council of nineteen hundred and twenty relating to the duties of the High Commissioner shall apply accordingly.

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Sub-sections (4) and (5) of section one hundred and seventy of the new Act shall not apply in relation to the functions of the Auditor of Indian Home Accounts under this paragraph.

(4) The Secretary of State shall, notwithstanding the repeal of sub-sections (1) and (2) of section twenty-six of the old Act, lay before both Houses of Parliament the same accounts and estimates as the Secretary of State in Council would under those sub-sections have been required so to lay.

14. (1) Anything which under the provisions of the new Act or of any Order or rules made thereunder, is required or authorised to be done by, to or before the Governor of a Province (whether or not the Governor is to act in his discretion or to exercise his individual judgment) shall, before the commencement of Part III of the new Act, be done by, to or before the Governor in Council or, in the case of Sind or Orissa, the Governor.

(2) The provisions of section two hundred and sixty-one of the new Act, which require the Secretary of State not to exercise certain powers except with the concurrence of his advisers, shall, in relation to any prospective exercise of those powers before the commencement of Part III of the new Act, be deemed to be satisfied if he exercises those powers with the concurrence of the majority of votes at a meeting of the Council of India.

15. (1) For a period of twelve months from the date of the commencement of Part III of the new Act a person who immediately before the said date was holding an office under the Crown in India shall not be disqualified from continuing to hold that office by reason of the fact that he is not a British subject and that no declaration entitling him to hold the office has been made under section two hundred and sixty-two of the new Act.

(2) Until other provision is made under the new Act, the conditions of service applicable to any person or any class of persons appointed or to be appointed to serve His Majesty in a civil capacity in India shall be the same as were applicable to that person or, as the case may be, to persons of that class immediately before the commencement of Part III of the new Act.

16. The provisions of this Order shall be in addition to, and not in derogation of, the provisions of section thirty-seven of the Interpretation Act, 1889.

M. P. A. Hankey.

(10)
THE INDIA AND BURMA (INCOME-TAX RELIEF) ORDER,
1936.

AT THE COURT AT BALMORAL,

The 26th day of September, 1936.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section one hundred and fifty-nine of the Government of India Act, 1935 (hereafter in this Order referred to as "the India Act") and section one hundred and thirty-six of the Government of Burma Act, 1935 (hereafter in this order referred to as "the Burma Act"), His Majesty is empowered by Order in Council to make provision for the grant of relief from tax where the same income is taxed or taxable both in India and Burma:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the India Act and sub-section (1) of section one hundred and fifty-seven of the Burma Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling Him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

PART I.

INTRODUCTORY AND GENERAL.

1. This Order may be cited as "THE INDIA AND BURMA (INCOME-TAX RELIEF) ORDER, 1936".
2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.
3. Any reference in this Order to, or to any provisions of, the Indian Income-tax Act, 1922, shall be construed as a reference to that Act or those provisions as for the time being in force in India, as for the time being in force in Burma or as for the time being in force both in India and in Burma, as the context and the circumstances may require, or, if that Act or those provisions have been repealed and re-enacted, either with or without modifications, to the re-enacting Act or provisions as in force as aforesaid.
4. In this Order, "income tax," or "tax" in relation to India or Burma, means income-tax payable in accordance with the Indian Income-tax Act, 1922, and includes super tax so payable; and other expressions have, except where the context otherwise requires, the same meanings as in the Indian Income-tax Act, 1922.

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5. References in this Order to the rate of tax shall—

- (a) in relation to India or Burma be construed as references to a rate determined by dividing the amount of income tax paid in India or Burma, as the case may be, for the year in question (before deduction of any relief granted under section forty-nine of the Indian Income-tax Act, 1922, or under this Order) by the amount of the income on which tax was charged;
- (b) in relation to the United Kingdom, mean the appropriate rate of United Kingdom income tax for the year in question as defined for the purposes of section twenty-seven of the Finance Act, 1920.

6. Any reference in this Order to the lower of two rates shall, where the rates are equal, be construed as a reference to either of those rates, and any reference in this Order to the two lowest of three rates shall, where the three rates are equal, be construed as a reference to any two of them, and where two of the three rates are equal and the third is less, be construed as a reference to the lowest rate and one of the equal rates.

7. This Order shall have effect with respect to the financial year beginning on the date of the commencement of Part III of the India Act and every subsequent financial year:

Provided that if, at any time after the expiration of three years from the commencement of Part III of the India Act, the Governor-General of India gives to the Governor of Burma, or the Governor of Burma gives to the Governor-General of India, notice of his desire that this Order shall cease to operate, the order shall not have effect with respect to any financial year subsequent to the financial year next following that during which the notice is given.

PART II.

RELIEF IN INDIA.

1. If any person who has paid Indian Income tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid for that year Burman income tax, or Burman income tax and United Kingdom income tax, in respect of that part of his income, he shall be entitled to a refund of Indian tax calculated on that part of his income at the appropriate rate of relief.

In this paragraph "appropriate rate of relief" means—

- (a) in relation to income taxed in India and Burma and not in the United Kingdom, a rate bearing to the Indian rate of tax or the Burman rate of tax, whichever is the lower, the same proportion as the Indian rate of tax, bears to the sum of the Indian rate of tax and the Burman rate of tax;
- (b) in relation to income taxed in India, Burma and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax.

2. No refund of tax shall be payable in India under section forty-nine of the Indian Income-tax Act, 1922, in respect of any income which

is taxed under that Act in Burma, and if any such refund is made it shall be repaid.

3. Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income tax.

4. No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of Part III of the India Act shall be included in India in the assessment of his income for any subsequent year.

5. In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty-nine thereof)—

- (a) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order;
- (b) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part III of this Order;
- (c) any reference to the United Kingdom in relation to relief under the said section twenty-seven, or in relation to refunds under the said section forty-nine, shall be construed as including a reference to Burma in relation to refunds under Part III of this Order or this part of this Order, as the case may require.

PART III.

RELIEF IN BURMA.

1. If any person who has paid Burman income tax for any year on any part as his income proves to the satisfaction of the Income-tax Officer that he has paid for that year Indian income tax, or Indian income tax and United Kingdom income tax, in respect of that part of his income, he shall be entitled to a refund of Burman tax calculated on that part of his income at the appropriate rate of relief.

In this paragraph "appropriate rate of relief," means—

- (a) in relation to income taxed in Burma and India and not in the United Kingdom, a rate bearing to the Burman rate of tax or the Indian rate of tax, whichever is the lower, the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax;
- (b) in relation to income taxed in Burma, India and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax.

2. No refund of tax shall be payable in Burma under section forty-nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in India, and if any such refund is made it shall be repaid.

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3. Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income tax.

4. No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of the Burma Act, shall be included in Burma in the assessment of his income for any subsequent year.

5. In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty-nine thereof)--

- (a) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order ;
- (b) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part II of this Order ;
- (c) any reference to the United Kingdom, in relation to relief under the said section twenty-seven or in relation to a refund under the said section forty-nine, shall be construed as including a reference to India in relation to refunds under Part II of this Order or this Part of this Order, as the case may require.

A. H. L. Hardinge.

(11)

**THE GOVERNMENT OF INDIA (INDIA OFFICE
PENSIONS) ORDER, 1936.**

AT THE COURT AT BALMORAL,

The 26th day of September, 1936.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS it is provided by subsection (1) of section two hundred and eighty-one of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act") that all persons who immediately before the commencement of Part III of the Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent civil servants of the State:

AND WHEREAS by subsection (3) of that section His Majesty in Council is empowered to modify the provisions of, and of any orders, rules and regulations made under, the Superannuation Acts, 1834 to 1935, in their application to the said persons so as to secure that the case of any such person is not dealt with in any manner less favourable to him than it would have been dealt with if the Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council:

AND WHEREAS by subsection (6) of that section His Majesty in Council is empowered to prescribe the conditions on which superannuation allowances, compensation allowances and retiring allowances payable to the said persons may be commuted:

AND WHEREAS subsection (1) of section two hundred and eighty-two of the Act provides for the payment out of the revenues of the Federation of so much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities payable to or in respect of the said persons as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer, not being service in respect of which an allowance or gratuity payable out of moneys provided by Parliament might, if the Act had not been passed, have been awarded under the Superannuation Acts, 1834 to 1935:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

THE GOVT. OF INDIA (INDIA OFFICE PENSIONS) ORDER, 1936. ccxxiii

1. This Order may be cited as "THE GOVERNMENT OF INDIA (INDIA OFFICE PENSIONS) ORDER, 1936".

2. In this Order—

"transferred officer" means an officer or servant transferred under subsection (1) or subsection (4) of section two hundred and eighty-one of the Act to the department of the Secretary of State;

"reckonable service" means established service and unestablished service reckoned in calculating any superannuation allowance, retiring allowance, additional allowance or gratuity;

"India Office service" means reckonable service on the permanent establishment of, or during employment by, the Secretary of State in Council.

3. For the avoidance of doubt it is hereby declared that a transferred officer who was serving on the permanent establishment of the Secretary of State in Council before the passing of the Superannuation Act, 1909, and adopted the provisions of that Act (as applicable to persons on the permanent establishment of the Secretary of State in Council) is eligible on his retirement for the increased additional allowance mentioned in subsection (1) of section three of that Act, notwithstanding that he was not at the passing of that Act in the permanent civil service of the State.

4. The proportion of any superannuation allowance, compensation allowance, retiring allowance, additional allowance or gratuity payable to or in respect of any transferred officer which under subsection (1) of section two hundred and eighty-two of the Act is to be paid out of the revenues of the Federation shall be a fraction thereof, the numerator of which is the number of days of the transferred person's India Office service and the denominator of which is the number of days of his total reckonable service:

Provided that—

(a) no part or any gratuity paid on the death of a transferred officer shall be paid out of the revenues of the Federation;

(b) if after the transfer a transferred officer is employed in any public office within the meaning of the Superannuation Act, 1892 (not being an office in the permanent civil service of the State) then, in ascertaining for the purposes of this paragraph the denominator of the fraction aforesaid, his service in that office shall be left out of account, and before applying that fraction to the amount of the allowance or gratuity payable to or in respect of him on his retirement, there shall be deducted from the allowance or gratuity so much thereof as is, under the Superannuation Act, 1892, contributed or borne by any fund or account in respect of his service in that office.

5.—(1) The provisions of this paragraph shall have effect with respect to the commutation of allowances under subsection (6) of section two hundred and eighty-one of the Act.

(2) There shall be the following limitations on the amount which may be commuted of any superannuation allowance or allowance granted under section two of the Superannuation Act, 1887:—

- (a) if the amount originally granted is greater than one hundred and eighty pounds per annum, no commutation shall be made which would reduce the amount payable below one hundred and fifty pounds per annum or below half the amount originally granted, whichever is the greater;
- (b) in other cases no commutation shall be made which would reduce the amount payable below one hundred and twenty pounds per annum and not more than thirty pounds per annum shall be commuted.

In relation to a transferred officer who has under section two of the Superannuation Act, 1935, surrendered a part of an allowance in return for a pension payable to his spouse or a dependant in respect of the period, if any, for which that spouse or dependant survives him, the references in this sub-paragraph to the amount payable shall be construed as references to the amount remaining payable to the officer himself; and in relation to a transferred officer who has under that section surrendered a part of an allowance in return for a pension becoming payable to his spouse while the officer himself is still living, the limitations imposed by this sub-paragraph on the amount which may be commuted shall be calculated as if no such surrender had been made, but only the sums payable to the transferred officer himself shall be capable of being commuted.

(3) There shall be no limit on the amount which may be commuted of any allowance granted to a transferred officer who has retired or been removed from his employment in consequence of the abolition of his office or for the purpose of facilitating improvements in the organisation of his department.

(4) No commutation shall be made of the part of the allowance which is paid out of moneys provided by Parliament unless the whole of the part of that allowance which is payable out of the revenues of the Federation has been or is to be commuted.

(5) Subject as aforesaid, commutations by the Treasury shall be on the same conditions as commutations which, apart from the Act, can be made under the Pensions Commutation Acts, 1871 to 1882, and commutations by the Secretary of State shall be on the conditions for the time being in force with respect to the commutation of the pensions of members of the Indian Civil Service, whose domicile at the time of their appointment was not in Asia.

A. H. L. Hardinge.

(12)

THE ADEN COLONY ORDER, 1936.

AT THE COURT AT BALMORAL.

The 26th day of September, 1936.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and eighty-eight of the Government of India Act, 1935, it is provided that on such date as His Majesty may by Order in Council appoint (in that section and in this Order referred to as "the appointed day") the then existing Chief Commissioner's Province of Aden shall cease to be a part of British India:

AND WHEREAS by the said section His Majesty in Council is empowered to make such provision as he deems proper for the government after the appointed day of the territories theretofore comprised in the said Province:

AND WHEREAS by subsection (5) of section three hundred and eleven of the said Act it is provided, amongst other things, that any Act of Parliament containing reference to India or any part thereof shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of the Act:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Government of India Act, 1935, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on Him as aforesaid and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE ADEN COLONY ORDER, 1936".

2. (1) In this Order unless the context otherwise requires—

"the Colony" means the Colony of Aden;

"the Province" means the Chief Commissioner's Province of Aden referred to in the Government of India Act, 1935, as constituted immediately before the appointed day;

"the Governor" means the Governor and Commander-in-Chief for the time being of the Colony and includes every person for the time being administering the Government thereof;

"Judge" means a Judge of the Supreme Court of the Colony; "the Gazette" means the Gazette of the Colony.

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The appointed day shall be the first day of April nineteen hundred and thirty-seven and as from that day the following provisions of this Order shall have effect.

4. The Territory referred to in the Government of India Act, 1935, as the Chief Commissioner's Province of Aden shall be known as the Colony of Aden.

5. There shall be a Governor and Commander-in-Chief (herein-after called "the Governor") in and over the Colony, and appointments to the said office shall be made by Commission under His Majesty's Sign Manual and Signet.

6. The Governor is hereby empowered and commanded to do all things that belong to his said office in accordance with such Commission as may be issued to him under His Majesty's Sign Manual and Signet, such Instructions as may from time to time be addressed to him under His Majesty's Sign Manual and Signet or through the Secretary of State, and such Orders in Council and other laws as may from time to time be in force in the Colony.

7. Every person appointed to fill the office of Governor shall, with all due solemnity, before entering on any of the duties of his office, cause the Commission appointing him to be Governor to be read and published at the seat of Government, in the presence of a Judge if able to attend, and of such Members of the Executive Council of the Colony as can conveniently attend, which being done he shall then and there take before them the Oath of Allegiance and the Oath for the due execution of the office of Governor in the forms set out in the Schedule to this Order, which Oaths a Judge, or, if no Judge is present, the Senior Member of the Executive Council of the Colony then present, is hereby required to administer.

8. Whenever the office of Governor is vacant, or the Governor is absent from the Colony or is from any cause prevented from, or incapable of acting in, the duties of his office, then such person or persons as may be appointed under His Majesty's Sign Manual and Signet, and in case there shall be no person or persons within the Colony so appointed and capable of discharging the duties of administration, then the Senior Member of the Executive Council then resident in the Colony and so capable shall during His Majesty's pleasure administer the Government of the Colony, first taking the Oaths hereinbefore directed to be taken by the Governor and in the manner herein prescribed, which being done, the Administrator as aforesaid is hereby empowered and commanded, subject, if he is appointed as aforesaid, to the terms of his appointment, to do during His Majesty's pleasure all things that belong to the office of Governor as provided in this Order:

Provided that the Governor whenever and so often as he is on a passage between any places included in his Government, or is visiting any of the neighbouring territories in the exercise or discharge of any powers or duties conferred or imposed upon him by virtue of his office, shall not be considered to be absent from the Colony within the meaning of this Order.

9. In the event of the Governor having occasion at any time to be temporarily absent for a short period from the seat of Government, or, in the exercise or discharge of any powers or duties conferred or imposed upon him by virtue of his office, to visit any neighbouring territories, he may by an Instrument under the Public Seal of the Colony, appoint any

person to be his Deputy within the Colony or any part thereof, during such temporary absence, and in that capacity to exercise, perform and execute for and on behalf of the Governor during such absence, but no longer, all such powers and authorities vested in the Governor as shall in and by such Instrument be specified and limited, but no others.

Every such Deputy shall conform to and observe all such instructions as the Governor shall from time to time address to him for his guidance. The power and authority of the Governor shall not by the appointment of a Deputy as aforesaid be abridged, altered, or in any way affected otherwise than His Majesty may at any time hereafter think proper to direct.

10. The Governor shall keep and use the Public Seal of the Colony for sealing all things whatsoever that shall pass the said Seal. Until a Public Seal shall be provided for the Colony, the Official Seal heretofore used by the Resident and Commander-in-Chief of Aden may be used as the Public Seal of the Colony.

11. There shall be an Executive Council in and for the Colony, and the said Council shall consist of such persons as His Majesty shall direct by Instructions under His Sign Manual and Signet, and all such persons shall hold their places in the said Council during His Majesty's pleasure, and subject thereto for such period and upon such conditions as may be specified in any such Instructions.

12. It shall be lawful for the Governor to make laws for the peace, order and good government of the Colony.

13. It shall be lawful for His Majesty to disallow any such law, and to signify such disallowance through the Secretary of State. Every law so disallowed shall cease to have effect from the time when the signification of such disallowance shall be published by the Governor, by notice in the Gazette, but without prejudice to anything lawfully done or suffered thereunder.

14. His Majesty hereby reserves to Himself, His heirs and successors power, with the advice of His or Their Privy Council, from time to time to make laws for the peace, order and good government of the Colony.

15. (1) There shall be, in and for the Colony, a court of unlimited civil and criminal jurisdiction to be called the Supreme Court.

(2) The constitution and powers of the Supreme Court may, subject to the provisions of this Order, be prescribed by laws enacted by the Governor under this Order.

(3) The District and Sessions Court as constituted immediately before the appointed day shall on that day become the Supreme Court and, subject to the provisions of this section, all the jurisdiction and powers then vested in the District and Sessions Court shall become vested in the Supreme Court.

(4) The person holding the office of District and Sessions Judge immediately before the appointed day shall, on that day, become Judge of the Supreme Court but shall hold office subject to the terms and conditions upon which he held office as District and Sessions Judge.

16. Subject to the provisions of this Order, all Acts, Orders, Ordinances, Regulations and other enactments having the force of law in the Province immediately before the appointed day shall, except so far as the same shall, in their application to the Colony, thereafter be repealed, amended or otherwise affected by or under any Order of His

Majesty in Council or any law made by the Governor under this Order, continue to have effect in the Colony, but shall be construed subject to such modifications as may be necessary to bring them into conformity with the provisions of this Order and of the Government of India Act, 1935.

17. Nothing in this Order shall affect the validity of future operation of any lawful act done by any authority in the Province before the appointed day.

18. All proceedings commenced before the appointed day in any Court of Justice in, or having jurisdiction in, the Province may be carried on in like manner, as nearly as may be, as if this Order had not been made, and any such proceeding may be amended in such manner as may appear necessary and proper in order to bring it into conformity with the provisions of this Order and of the Government of India Act, 1935.

19. Claims which, if the Government of India Act, 1935, had not been passed, might have been enforced by or against the Secretary of State for India in Council in connection with the administration of the Province, may be enforced in such manner as may be prescribed by the law of the Colony by or against the Government of the Colony.

20. (1) An appeal shall lie from the Supreme Court to the High Court of Judicature at Bombay (in this section referred to as "the High Court")—

(a) in civil cases—

(i) from any final judgment of the Supreme Court, where the appeal involves, directly or indirectly, some claim, or question respecting property or some civil right, of the value of five thousand rupees or upwards, being a judgment from which, if it were a judgment of a District Court in the Province of Bombay, an appeal would lie to the High Court, under the Indian Code of Civil Procedure, 1908, as amended prior to the appointed day; and

(ii) with the leave of the Supreme Court or of the High Court, from any other judgment of the Supreme Court whether final or interlocutory, if, by reason of the importance of the question involved in the appeal or otherwise, the Court is satisfied that leave to appeal ought to be granted; and

(b) in criminal cases, from any judgment of the Supreme Court from which, if it were a judgment of a Court of Session in the Province of Bombay, an appeal would lie to the High Court under the Indian Code of Criminal Procedure, 1898, as amended prior to the appointed day:

Provided that no appeal shall lie where the sentence imposed is one of imprisonment not exceeding six months or of fine not exceeding five hundred rupees or of both such imprisonment and fine.

(2) When any person is sentenced to death and no appeal has been lodged by him within the time limited for that purpose, the Supreme Court shall transmit the record of the case to the High Court and an appeal shall thereby be deemed to have been lodged by the said person; and the sentence shall not be carried out unless and until it shall have been confirmed by the High Court.

(3) In civil matters an appeal may be brought to His Majesty in Council from a judgment of the High Court given in pursuance of this section in the following cases:—

- (a) As of right, from any final judgment of the Court, where the appeal involves, directly or indirectly, some claim, or question respecting property or some civil right, of the value of ten thousand rupees or upwards and if the judgment, appealed from affirms the decision of the Supreme Court the appeal involves some substantial question of law; and
 - (b) At the discretion of the High Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.
- (4) Every judgment of the High Court given on appeal under this section, and every Order of His Majesty in Council made on appeal from any such judgment, may be enforced in the Colony in the same manner, as nearly as may be, as if it were a judgment of the Supreme Court.
- (5) (a) The High Court shall, in relation to appeals under this section, have the like powers as are conferred upon it by the Indian Code of Civil Procedure, 1908, or the Indian Code of Criminal Procedure, 1898, as amended prior to the appointed day, in relation to appeals from a District Court or a Court of Session, as the case may be, in the Province of Bombay.
- (b) The fees payable to the High Court in respect of appeals under this section shall be the fees prescribed from time to time in respect of similar appeals to the High Court from the said Courts in the Province of Bombay.
- (6) Notwithstanding anything in this section the Governor may, by law made under this Order, prescribe, or enable rules of court to be made prescribing, the practice and procedure to be followed in relation to any appeals under this section including (without prejudice to the generality of the foregoing) the imposition upon rights of appeal of conditions as to the giving of security or otherwise.
- (7) Nothing in this section shall be taken to prejudice the right of His Majesty upon the humble petition of any person aggrieved by any judgment of the High Court, to admit his appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose.
- (8) In this section, unless the context otherwise requires, the expression "judgment" includes any order or decree and a refusal to make any order.
- (9) Sections 6, 7, 8, 36, 37 and 38 of the Aden Civil and Criminal Justice Regulation, 1933, shall cease to have effect.
21. No subject of His Majesty shall on grounds only of religion, place of birth, descent, colour, or any of them be ineligible for office under the Crown in the Colony, or be prohibited on any such ground from entering the Colony or from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in the Colony.
22. The Governor, in His Majesty's name and on His Majesty's behalf, may make and execute, under the Public Seal, grants and dispositions of any lands within the Colony which may be lawfully granted or disposed of by His Majesty:

Provided that every such grant or disposition shall be made in conformity either with some Order in Council or law or regulation in force in

the Colony or with some Instructions addressed to the Governor under His Majesty's Sign Manual and Signet, or through the Secretary of State.

23. The Governor may constitute and appoint all such Judges and other necessary officers as may be lawfully constituted or appointed by His Majesty, all of whom, unless otherwise provided by law, shall hold their offices during His Majesty's pleasure.

24. The Governor may, subject to the provisions of any law for the time being in force in the Colony and to such Instructions as may from time to time be given to him by His Majesty through the Secretary of State upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office within the Colony, or, subject as aforesaid, may take such other disciplinary action as may seem to him desirable.

25. When any offence has been committed for which the offender may be tried within the Colony, the Governor may, as he shall see occasion, in His Majesty's name and on His Majesty's behalf, grant a pardon to any accomplice in such offence who shall give such information as shall lead to the conviction of the principal offender or of any one of such offenders if more than one; and further, may grant to any offender convicted in any Court within the Colony, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence, for such period as the Governor thinks fit, and may remit any penalties or forfeitures due to His Majesty.

26. All His Majesty's officers, civil and military, and all other inhabitants of the Colony are hereby required and commanded to be obedient, aiding and assisting unto the Governor and to such person or persons as may, from time to time, under the provisions of this Order, administer the Government of the Colony.

27. Section one hundred and eighty-seven B of the Army Act and section one hundred and eighty-seven B of the Air Force Act shall cease to have effect.

A. H. L. Hardinge.

SCHEDULE.

OATH OF ALLEGIANCE.

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty King Edward VIII, His Heirs and Successors, according to Law. So help me God.

OATH FOR THE DUE EXECUTION OF THE OFFICE OF GOVERNOR.

I, _____, swear that I will well and truly serve His Majesty King Edward VIII, His Heirs and Successors in the Office of Governor. So help me God.

(13)

**THE GOVERNMENT OF INDIA (PROVINCIAL
LEGISLATURES) (MISCELLANEOUS
PROVISIONS) ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of December, 1936.

PRESNT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-one of, and the Fifth and Sixth Schedules to, the Government of India Act, 1935 (hereafter in this Order referred to as "the Act"), His Majesty in Council is empowered to make provision with respect to certain matters connected with Provincial Legislative Assemblies.

AND WHEREAS by subsection (2) of section three hundred and nine of the Act His Majesty in Council is empowered to revoke or vary any Order previously made by him in Council under the said provisions:

AND WHEREAS by section three hundred and ten of the Act His Majesty in Council is empowered to make temporary provisions for the purpose of removing any difficulties arising in relation to the transition from the provisions of the Government of India Act to the provisions of the Act:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order.

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on Him as aforesaid and of all other powers enabling Him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (PROVINCIAL LEGISLATURES) (MISCELLANEOUS PROVISIONS) ORDER, 1936."

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. For the purposes of the first elections of persons to serve as members of Provincial Legislatures, no person shall be subject to any disqualification as being the holder of an office of profit under the Crown in India by reason only of any appointment held by him under paragraph ten of the Government of India (Constitution of Orissa) Order, 1936, or paragraph ten of the Government of India (Constitution of Sind) Order, 1936.

4. (1) For sub-paragraph (2) of paragraph eight of Part III of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, there shall be substituted the following sub-paragraph:—

"(2) The report shall further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom costs shall be paid.

"Any such recommendation may include a recommendation for the payment to the Advocate-General of the Province or a person acting under his instructions, attending the trial in pursuance of an order of the Commissioners, of costs in respect of that attendance, but shall not include a recommendation for the payment of costs in respect of any other Government expenditure in connection with the inquiry."

(2) This paragraph shall have effect as from the commencement of the Government of India (Provincial Elections) (Corrupt Practices and Election Petition) Order, 1936, but nothing in this paragraph shall render invalid anything done before the making of this Order by virtue of paragraph eight of Part III of the said Order as originally enacted.

M. P. A. Hankey.

(14)

**THE GOVERNMENT OF INDIA (COMMENCEMENT
AND TRANSITORY PROVISIONS) (NO. 2) ORDER, 1936.
AT THE COURT AT BUCKINGHAM PALACE.**

The 18th day of December, 1936.

PRESENT.

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section three hundred and twenty of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act"), it is provided that the provisions of that Act other than those of Part II thereof shall, subject to any express provision to the contrary, come into force on a date to be appointed by His Majesty in Council for the commencement of Part III thereof, but His Majesty in Council is empowered to fix an earlier or later date for the coming into operation of any particular provisions of the Act:

AND WHEREAS by the Government of India (Commencement and Transitory Provisions) Order, 1936, it was provided that the provisions of Part VIII of that Act should come into force on such dates as His Majesty in Council might thereafter appoint:

AND WHEREAS by section three hundred and ten of the Act His Majesty in Council is empowered, for the purpose of facilitating the transition to the provisions of the Act from the provisions of the Government of India Act to direct that the Act shall during a limited period have effect subject to adaptations and modifications and to make other temporary provisions for the purposes of removing any difficulties arising in relation to the transition:

AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty in the exercise of the said powers and of all other powers enabling Him in that behalf is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:

1. This Order may be cited as "THE GOVERNMENT OF INDIA (COMMENCEMENT AND TRANSITORY PROVISIONS) (No. 2) ORDER, 1936.

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. Section one hundred and ninety-nine of the Act (which relates to the powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies) shall come into force on the commencement of Part III of the Act, but until the Federal Railway Authority is established shall have effect as if the words "after consultation with the Authority" were omitted therefrom.

4. (1) In relation to expenditure and revenue of the Governor-General in Council for the financial year beginning on the first day of April, nineteen hundred and thirty-seven, section sixty-seven A of the Government of India Act shall, as from the making of this Order, have effect as set out in the Ninth Schedule to the Act:

Provided that the references in paragraphs (vii) and (viii) of subsection (3) of that section to the provisions of the Act for the time being in force shall be construed as references to the provisions of the Act which will be in force after the said first day of April.

(2) Section one hundred and forty-five of the Act shall, for the purpose of enabling statements to be made thereunder of the sums which will be required in the said financial year for the discharge of the functions of the Crown in its relations with Indian States, come into force on the making of this Order, and any such statements made before the beginning of the said year may, instead of being made by His Majesty's Representative for the exercise of the said functions of the Crown, be made by the Governor-General.

M. P. A. Hankey.

(15)

**THE GOVERNMENT OF INDIA (AUDIT AND ACCOUNTS)
ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of December, 1936.

PRESIDENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by subsection (2) of section one hundred and sixty-six of the Government of India Act, 1935, it is provided that the conditions of service of the Auditor-General of India shall be such as may be prescribed by His Majesty in Council, and by subsection (3) of the said section it is further provided that the Auditor-General of India shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council:

AND WHEREAS by subsection (3) of section one hundred and seventy of the said Act it is provided that the Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority, or of any Province as may be prescribed by, or by rules made under, an Order of His Majesty in Council:

AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the said Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

I. INTRODUCTORY.

1. This Order may be cited as "THE GOVERNMENT OF INDIA (AUDIT AND ACCOUNTS) ORDER 1936," and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. (1) In this Order the following expressions have the meanings hereby assigned to them, that is to say:—

"Accounts" includes, in relation to commercial undertakings of a Government, subsidiary accounts;

"Appropriation accounts" means accounts relating expenditure brought into account during a financial year to the several items specified in the schedules of authorised expenditure authenticated under section thirty five, or section eighty, of the Act;

"Auditor-General" means the Auditor-General of India;

"Indian Civil Service" means the service known as such at the date of the passing of the Act;

"Province" means, subject to the provisions of the next succeeding sub-paragraph, a Governor's Province;

"Rules," in relation to leave, pension and other conditions of service, includes regulations and orders; and

"The Act" means the Government of India Act, 1935:

and the Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) The provisions of this Order shall apply in relation to the accounts of Coorg as they apply in relation to the accounts of a Province, subject, however, the following adaptations, that is to say:—

(a) any reference to the Governor of a Province shall be construed as a reference to the Governor-General; and

(b) the reference in the last preceding sub-paragraph to schedules of authorised expenditure shall be construed as a reference to the annual budget estimates of expenditure passed by the Chief Commissioner of Coorg.

(3) As respects the period before the establishment of the Federation,—

(a) any reference in this Order to the Federal Government, or to the accounts or the revenues of the Federation, shall be construed as a reference to the Governor-General in Council or to the accounts or the revenues of the Governor-General in Council, and any reference to the Governor-General, except, where the reference is to the Governor-General acting in his discretion or exercising his individual judgment, shall also be construed as a reference to the Governor-General in Council; and

(b) the reference in sub-paragraph (1) of this paragraph to schedules of authorised expenditure shall be construed as a reference to appropriations made and expenditure authorised by the Governor-General under the provisions of section sixty-seven A (which relates to the Indian Budget) included in the Ninth Schedule to the Act.

II. THE AUDITOR-GENERAL OF INDIA.

(i) *Conditions of Service of Auditor-General.*

3. The salary of the Auditor-General shall be at the rate of sixty thousand rupees per annum.

4. The Auditor-General shall on his appointment give to the Governor-General an undertaking that he will not after he has ceased to hold his office accept any employment in the service of a local authority or railway company in India, or of an Indian State or Ruler, or, save with the previous consent of the Governor-General in his discretion, any other employment in India.

5. The Auditor-General may at any time by writing under his hand addressed to the Governor-General resign his office.

6. (1) An Auditor-General who at the date of his appointment was a member of the Indian Civil Service shall vacate his office on completing thirty-five years' total service in that service and as Auditor-General:

Provided that, if at the date of his appointment he had completed thirty years' service or more, he may hold office for five years.

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(2) Any other Auditor-General shall vacate his office on attaining the age of fifty-five years, or; if at the date of his appointment he had attained the age of fifty, after holding office for five years.

7. (1) An Auditor-General who at the date of his appointment was in the service of the Crown in India may be granted leave during his tenure of office in accordance with the rules for the time being applicable to the service to which at the date of his appointment he belonged, his service as Auditor-General being treated for the purposes of those rules as continuing service counting for leave in the service to which he belonged.

(2) Any other Auditor-General may be granted leave on such terms and conditions as may be prescribed by Order in Council.

8. The power to grant or refuse leave to the Auditor-General, and to revoke or curtail leave granted to him, shall be vested in the Governor-General acting in his discretion.

9. (1) An Auditor-General who at the date of his appointment was in the service of the Crown in India shall be eligible for such pension as may be admissible under the rules for the time being applicable to the service to which at the date of his appointment he belonged, his service as Auditor-General being reckoned for the purposes of those rules as service for pension, including higher additional pension on such terms and conditions as may be prescribed by or under those rules.

Provided that, if, when any such Auditor-General vacates his office, leave might have been granted to him pending retirement under the rules for the time being applicable to his former service if he had continued to be and still was a member thereof with a claim to further employment in a permanent post, his pension in respect of the period for which leave might have been so granted shall be an amount equal to the pay and allowances which would be payable to him if he were on leave from the office of Auditor-General, and his ultimate pension shall be computed as if the said period were a period of service as Auditor-General.

(2) Any other Auditor-General shall be eligible for such pension, if any, as may be prescribed by Order in Council.

10. Subject to the provisions of section one hundred and sixty-six of the Act and of this Order and any other Order in Council made under the said section, the conditions of service of the Auditor-General, including his emoluments during any period of duty out of India and his travelling allowances while travelling on duty, shall be determined by the rules for the time being applicable to an officer of non-Asiatic domicile, or, as the case may be, of Asiatic domicile, appointed by the Secretary of State in Council or the Secretary of State to a civil service in India and holding the rank of Secretary to Government:

Provided that nothing in this paragraph shall have effect so as to give to an Auditor-General who was at the date of his appointment in the service of the Crown in India less favourable terms in respect of any of the matters aforesaid than those to which he would be entitled as a member of the service to which at the date of his appointment he belonged, his service as Auditor-General being treated for the purposes of this proviso as continuing service in the service to which he belonged.

(ii) Duties and Powers of Auditor-General.

11. (1) Subject to the provisions of this paragraph, the Auditor-General shall be responsible for the keeping of the accounts of the Federation and of each province, other than accounts of the Federation relating to defence or railways and accounts relating to transactions in the United Kingdom.

(2) As respects accounts of the Federation, the Governor-General exercising his individual judgment, and as respects accounts of a Province, the Governor, exercising his individual judgment, may, after consultation with the Auditor-General, make provision by rules for relieving the Auditor-General from responsibility for the keeping of the accounts of any particular service or department.

(3) The Governor-General, exercising his individual judgment, may, after consulting with the Auditor-General make provision by rules relieving the Auditor-General from responsibility for keeping account of any particular class or character.

(4) The Auditor-General shall, from the accounts kept by him and by the other persons responsible for keeping public accounts, prepare in each year accounts (including, in the case of accounts kept by him, appropriation accounts) showing the annual receipts and disbursements for the purposes of the Federation and each Province, distinguished under the respective heads thereof, and shall submit those accounts to the Federal Government or, as the case may be, to the Government of the Province on such dates as he may, with the concurrence of the Government concerned determine.

(5) Notwithstanding anything in this paragraph, the Auditor-General shall comply with any general or special orders of the Governor-General, or, as the case may be, a Governor as to the head of account under which any specified transaction or the transactions of any specified class is, or are to be included.

In issuing any such order as aforesaid the Governor-General or Governor shall exercise his individual judgment after consulting the Auditor-General.

12. It shall be the duty of the Auditor-General to prepare annually, in such form as he with the concurrence of the Governor-General may determine, and to submit to the Governor-General a General Financial statement incorporating a summary of the accounts of the Federation and of all the Provinces for the last preceding year and particulars of their balances and outstanding liabilities and containing such other information as to their financial position as the Governor-General may direct to be included in the Statement.

13. (1) It shall be the duty of the Auditor-General—

(i) to audit all expenditure from the revenues of the Federation and of the Provinces and to ascertain whether moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it;

(ii) to audit all transactions of the Federation and of the Provinces relating to debt, deposits, sinking funds, advances, suspense accounts and remittance business;

(iii) to audit all trading, manufacturing and profit and loss accounts and balance sheets kept by order of the Governor-General or of the Governor of a Province in any department of the Federation or of the Province;
and in each case to report on the expenditure, transactions or accounts so audited by him.

(2) The Auditor-General may with the approval of, and shall if so required by, the Governor-General or the Governor of any Province audit and report on—

(i) the receipts of any department of the Federation or, as the case may be, of the Province;

THE GOVT. OF INDIA (AUDIT AND ACCOUNTS) ORDER, 1936. CCXXXIX

(ii) the accounts of stores and stock kept in any office or department of the Federation or, as the case may be, of the Province. The Governor-General or the Governor of a Province may after consultation with the Auditor-General make regulations with respect to the conduct of audits under this sub-paragraph.

(3) This paragraph shall not apply to accounts of transactions in the United Kingdom, and the powers and duties of the Auditor-General with respect to the accounts relating to such transactions shall be as specified in section one hundred and seventy of the Act.

14. If the Governor-General appoints an independent officer to audit sanctions to expenditure accorded by the Auditor-General, the Auditor-General shall produce for inspection by that officer all books and other documents relating thereto and give him such information as he may require for the purposes of his audit.

15. It shall be the duty of the Auditor-General, so far as the accounts for the keeping of which he is responsible enable him so to do, to give to the Federal Government and to the Government of every Province such information as they may from time to time require, and such assistance in the preparation of their annual financial statements as they may reasonably ask for.

16. The Federation and every Province shall—

(i) supply to the Auditor-General free of charge the annual Budget estimates of the Federation or of the Province and any other publications issued by a department of the Federation or of the Province which he may require for purposes connected with his audit functions and,

(ii) give to him such information as he may require for the preparation of any account or report which it is his duty to prepare.

17. The Auditor-General shall have authority to inspect any office of accounts in India which is under the control of the Federation or of a Province, including treasuries and such offices responsible for the keeping of initial or subsidiary accounts as submit accounts to him.

18. The Auditor-General shall have authority to require that any books and other documents relating to transactions to which his duties in respect of audit extend, other than books or documents which are in the United Kingdom, shall be sent to such place as he may appoint for inspection by him:

Provided that, if the Governor-General or the Governor of a Province certifies that any such book or document is a secret book or document, the Auditor-General shall accept as a correct statement of the facts stated in that book or document a statement certified as correct by the Governor-General or, as the case may be, by the Governor.

19. Anything which under this Order is directed to be done by the Auditor-General may be done by an officer of his department authorised by him, either generally or specially:

Provided that except during the absence of the Auditor-General on leave or otherwise, an officer shall not be authorised to submit on his behalf any report which the Auditor-General is required by the Act to submit to the Secretary of State, the Governor-General or the Governor of a Province.

III. THE AUDITOR OF INDIAN HOME ACCOUNTS.

20. (1) The Auditor of Indian Home Accounts (hereafter in this paragraph referred to as "the Auditor") shall, under the general superintendence of the Auditor-General, audit the accounts of transactions in the

United Kingdom affecting the revenues of the Federation or of any Province.

(2) In discharging his functions under this paragraph, the Auditor shall examine and audit the accounts, including appropriation accounts, of the receipt, expenditure and disposal in the United Kingdom of all money, stores and other property due to, or held for the purposes of, the Federation or any Province, and shall report on those accounts and, if he is satisfied as to their correctness, shall certify them.

(3) In order that the Auditor's examination of the accounts of accounting authorities and persons may, so far as possible, proceed *pari passu* with their transactions, he shall have free access at all convenient times to their books of account and to the other documents relating to their transactions, and may require them to furnish him from time to time, either at regular intervals or when called upon, with accounts of their transactions up to such date as he may direct :

Provided that, if the Secretary of State, or the High Commissioner for India, certifies that any such book or document as aforesaid is a secret book or document, the Auditor shall accept as a correct statement of the facts appearing in that book or document a statement certified as correct by the Secretary of State or, as the case may be, by the High Commissioner.

(4) As respects any matter for which no provision is made by the Act or by this Order, the Auditor shall comply with any rules which may be made for his guidance by the Governor-General acting in his discretion.

21. The provisions of the last preceding paragraph, except in so far as they relate to appropriation accounts, shall apply in relation to transactions in the United Kingdom affecting the revenues of the Federal Railway Authority as they apply in relation to such transactions affecting the revenues of the Federation.

M. P. A. Hankey.

(16)

**THE GOVERNMENT OF INDIA (FEDERAL COURT) ORDER,
1936.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of December, 1936.

PRESENT.

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by sub-section (1) of section two hundred of the Government of India Act, 1935 (hereafter in this Order referred to as "The Act") provision is made for the establishment of a Federal Court consisting of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary, so, however, that (except in the circumstances mentioned in the said sub-section) the number of those other Judges shall not exceed six:

AND WHEREAS by section two hundred and one of the Act Judges of the Federal Court are to be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

AND WHEREAS by the Government of India (Commencement and Transitory Provisions) Order, 1936, it is provided that Chapter I of Part IX of the Act (being the Chapter which contains the provisions of the Act with respect to the Federal Court) shall come into force on such date as His Majesty may by Order in Council appoint:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty in exercise of the said powers and of all other powers enabling him in that behalf is pleased by and with the advice of his Privy Council to order, and it is hereby ordered as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (FEDERAL COURT) ORDER, 1936".

2. (1) In this Order—

"Chief Justice" means the Chief Justice of India but does not include an acting Chief Justice;

"Judge" means a Judge of Federal Court and, unless the context otherwise requires, includes the Chief Justice;

"actual service" includes—

(i) time spent by a Judge on duty as a Judge, or in the performance of such other functions as he may at the request of the Governor-General undertake to discharge; and

- (ii) vacations other than a vacation wholly comprised within a period of leave;

"Service for pension" includes—

- (i) actual service;
 - (ii) one month or the amount actually taken, whichever is less, of each period of authorised leave on full allowances; and
 - (iii) joining time taken on return from leave out of India.
- (2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The provisions of Chapter I of Part IX of the Act (other than the provisions of sections two hundred and six and two hundred and fifteen) shall come into force on the first day of October, nineteen hundred and thirty-seven:

Provided that section two hundred and five of the Act (which relates to the appellate jurisdiction of the Federal Court in appeals from High Courts in British India) shall come into force on the first day of April, nineteen hundred and thirty-seven, and accordingly certificates may be given under that section at any time after the said date notwithstanding that the Federal Court has not yet been constituted.

4. There shall be paid to Judges in respect of time spent on actual service salary at following rates:—

Chief Justice Rs. 7,000 per month.

Other Judges Rs. 5,500 per month.

5. There shall be payable to a Chief Justice

- (a) on his retirement on attaining the age of sixty-five; or
- (b) on his retirement at an earlier date, either after completing not less than twelve years' actual service, or on grounds approved by the Secretary of State, a pension at the rate of seventy-five pounds per annum in respect of each period of six months' service for pension: provided that

- (i) if his total service for pension is less than six months, or is six months or more but less than twelve months, he shall be deemed for the purposes of this paragraph to have in the first case six, and in second case twelve, months' service for pension;

- (ii) the pension shall not in any case exceed two thousand pounds per annum.

6. (1) If a Chief Justice dies during his service as such, there shall be paid to his legal personal representatives a gratuity of three thousand pounds.

For the purposes of this paragraph a Chief Justice who at the date of his appointment was a resident in Europe shall be deemed to have commenced his service at the date when he embarked for India for the purpose of assuming his office.

(2) If a Chief Justice who is entitled to a pension under provisions of this Order dies within one year from the date of his retirement there shall be paid to his legal personal representatives by way of gratuity the sum, if any, by which the aggregate of any amounts paid or due to him whether from the revenues of the Federation or from the Exchequer in respect of pension (including any gratuity payable on retirement) falls short of three thousand pounds.

7. The rights of Judges other than the Chief Justice in respect of pensions shall be such as His Majesty in Council may hereafter determine.

8. There shall be paid to a Judge who was permanently resident in Europe at the date of his appointment and was not a member of a Civil Service of the Crown in India an allowance of five hundred pounds for expenses in respect of equipment and travelling on appointment.

9. A Judge shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty in India and shall be afforded such reasonable facilities in connection with travelling as the Governor-General may from time to time prescribe, exercising his individual judgment.

10. Subject to the provisions of this Order and of any other Order in Council made under the Act, the privileges of a Judge in respect of leave and passages and the other conditions of his service shall be determined by the Rules for the time being applicable to an officer of non-Asiatic domicile, or, as the case may be, of Asiatic domicile, appointed by the Secretary of State to a Civil Service of the Crown in India and holding the rank of Secretary to the Government of India.

M. P. A. Hankey.

(17)

**THE GOVERNMENT OF INDIA (GOVERNORS'
ALLOWANCES AND PRIVILEGES) ORDER, 1936.**

AT THE COURT AT BUCKINGHAM PALACE,

The 18th day of December, 1936.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by paragraphs two to four of the Third Schedule to the Government of India Act, 1935, His Majesty in Council is empowered to determine the allowances and customs privileges of the Governors of Provinces and the provision which is to be made for enabling them to discharge conveniently and with dignity the duties of their offices:

AND WHEREAS it is provided by paragraph five of the said Schedule that any person appointed by His Majesty to act as a Governor shall, while he is so acting, be entitled, save as may be otherwise provided by His Majesty in Council, to the same allowances and privileges as that Governor:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered, as follows:—

Introductory.

1. This order may be cited as "THE GOVERNMENT OF INDIA (GOVERNORS' ALLOWANCES AND PRIVILEGES) ORDER, 1936."

2. The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

3. In this order—

"official residences" in relation to the Governor of a Province mean the official residence or residences specified in the First Schedule to this order in relation to that Province and include the staff quarters and other buildings appurtenant thereto and the gardens thereof;

"official railway saloons, river craft and aircraft" in relation to the Governor of a Province mean such railway saloons, river craft and aircraft, if any, as have been provided for his use or that of his predecessors with the sanction of the Secretary of State or of the Secretary of State in Council;

"maintenance" in relation to official residences includes the payment of local rates and taxes and the provision of electricity, gas, and water, and, in relation to river craft, includes expenditure on the pay of the establishment maintained in connection therewith, and on their victualling while afloat, and expenditure on the purchase of marine stores and in relation to motor-cars and aircraft includes the pay and allowances of chauffeurs or pilots and the provision of oil and petrol;

"acting Governor" means a person appointed by His Majesty to act as Governor while the Governor is absent from India, or is for any reason unable to perform the duties of his office.

Allowances, Privileges, etc.

4. (1) The allowances specified in the Second Schedule to this order shall be paid to each Governor in connection with his appointment.

(2) This paragraph does not apply to acting Governors, but there shall be paid to an acting Governor an allowance equal to his actual expenses in travelling, within India, with his family, if any, and his and his family's effects, to take up his duties as acting Governor.

5. Each Governor throughout his term of office shall be entitled without payment of rent or hire to the use of his official residences and official railway saloons and river craft and aircraft and of the motor-cars provided for his use, and no charge shall fall on him personally in respect of the maintenance thereof.

6. (1) There shall be paid from time to time to each Governor an allowance equal to his actual expenses in renewing the furnishings of his official residences, so, however, that the total amount paid to each person holding the office of Governor of a Province shall not exceed the maximum specified in the Third Schedule to this order in relation to that Province.

(2) This paragraph does not apply to acting Governors.

7. (1) In order that the Governor may be enabled to discharge conveniently and with dignity the duties of his office there shall in each year be charged on and paid out of the revenues of each Province—

(a) for the purposes specified in the Fourth Schedule to this order such amounts, not exceeding the maximum amounts specified in that Schedule, as the Governor may, subject to any general or special orders of the Secretary of State, consider to be necessary for that year;

(b) such further amounts for the maintenance, improvement, renewal or replacement of the Governor's official residences and official railway saloons, river craft, and aircraft, and for the provision, if it is thought desirable, of official aircraft as the Secretary of State may by general or special order authorise:

Provided that—

(i) the maximum amounts specified in the said Fourth Schedule under the sub-heads "military secretary and his establishment" and "bodyguard" may in any year be increased by such amount as the Governor may consider necessary to defray the leave allowances of any officer provision for whose pay is made under those sub-heads respectively;

- (ii) the maximum amount so specified under the sub-head "maintenance and repairs of furnishings of official residences" may in any year be increased by the amount or amounts not expended in previous years, whether before or after the commencement of Part III of the Act, and by such further amount not exceeding twenty-five per cent. of the maximum amount so specified as the Secretary of State may by special direction authorise;
- (iii) The maximum contract allowance for any year may be increased by the amount of any portion of the maximum contract allowances not expended in previous years, whether before or after the commencement of Part III of the Act;
- (iv) The Governors of the North-West Frontier Province and of Orissa (but not the Governors of other Provinces may charge the cost of petrol consumed during tours against the grant for tour expenses instead of against the contract allowance.

(2) The Governor shall exercise his individual judgment as respects the matters specified in this paragraph, and he shall also exercise his individual judgment as to the amount to be included in any year in the estimates of expenditure laid before the Provincial Legislature for the purpose of giving effect to the provisions of this paragraph.

8. (1) The leave allowances of Governors shall be at the following rates:—

Governors of Madras, Bengal, Bombay, the United Provinces, the Punjab and Bihar	4,000 rupees per month.
Governors of the Central Provinces and Berar	3,000 rupees per month.
Governors of other Provinces	2,750 rupees per month.

Provided that the Secretary of State may in any particular case, or special reasons to be recorded by him, increase the rate to such amount, not exceeding 5,500 rupees per month, as appears to him just.

(2) Where payment is made in sterling, the rate of exchange taken shall be that ruling on the day of payment or on the last day of the month in respect of which the payment is made, whichever day first occurs.

(3) An acting Governor shall not be entitled to any leave allowance.

9. No customs duties shall be levied in India on the following articles if imported or purchased out of bond by Governors on appointment or during their tenure of office:

- (a) articles for the personal use, wear or consumption of the Governor or any member of his family;
- (b) Food, drink and tobacco for consumption by members of the Governor's household or by his guests, whether official or not;
- (c) Articles for the furnishing of any of the Governor's official residences;
- (d) Motor-cars provided for the Governor's use.

M.P.A. Hankey.

FIRST SCHEDULE.

OFFICIAL RESIDENCES.

Madras	The Government Houses at Madras, Guindy and Ootacamund.
Bombay	The Government Houses at Bombay, Mahabaleshwar and Ganeshkind.
Bengal	The Government Houses at Calcutta, Dacca, Darjeeling and Barackpore.

The United Provinces . . .	The Government Houses at Allahabad, Lucknow and Naini Tal.
The Punjab . . .	Government House, Lahore, and Barnes Court, Simla.
Bihar . . .	The Government Houses at Patna and Ranchi and the Chalet at Netarhat.
Central Provinces and Berar . . .	The Government Houses at Nagpur, Pachmari and Jubbulpore.
Assam . . .	Government House, Shillong (including Peak Cottage).
The North-West Frontier Province . . .	The Government Houses at Peshawar and Nathiagali.
Sind . . .	Government House, Karachi.
Orissa . . .	Government House, Puri, and the Government House to be built at the New Capital of the Province.

SECOND SCHEDULE.

ALLOWANCES ON APPOINTMENT.

1. Equipment and Travelling.

	Governors of Madras, Bombay and Bengal.	Governor of the United Provinces.	Governors of the Punjab and Bihar.	Governors of other Provinces.
	£	£	£	£
If resident in Europe when appointed . . .	2,000	1,800	1,500	1,200
If resident in India or Ceylon when appointed, and not then in the service of the Crown in India . . .	750	650	550	450
If resident elsewhere when appointed:— Equipment . . .	1,000	900	750	600
Travelling on appointment (see note below) . . .	400 (maximum)	300 (maximum)	300 (maximum)	300 (maximum)
If in the service of the Crown in India when appointed (otherwise than as a Governor) . . .	500	400	300	200
If transferred from the Governorship of another Province:— Equipment . . .	250 if transferred from Madras, Bengal or Bombay; 350 in other cases.	200	160	120
Travelling on appointment.	Actual expenses in transporting himself, his family, his personal staff and servants, and his and their effects.			

NOTE.—The allowance for travelling to be allowed to a Governor who is resident elsewhere than in Europe, India or Ceylon when he is appointed shall be as decided by the Secretary of State in each case, subject to the maxima specified above.

2. *Motor Cars.*

A sum, to be fixed from time to time by the Secretary of State and to be payable subject to such conditions as may be determined by him, to be spent in the purchase for the Province of suitable motor-cars for the use of the Governor; and the Governor's actual expenses on freight and insurance in transporting those motor-cars to his Province.

THIRD SCHEDULE

MAXIMUM ALLOWANCES TO GOVERNORS FOR RENEWAL OF FURNISHINGS
OF OFFICIAL RESIDENCES.

	Rs.	
Madras	14,000	} For each complete twelve months which have, when the Governor assumes office, elapsed since his pre decessor assumed office (act- ing Governors being disregarded).
Bombay	23,000	
Bengal	20,500	
The United Provinces	4,000	
The Punjab	3,000	
Bihar	4,500	
The Central Provinces and Berar	2,900	
Assam	1,000	
The North-West Frontier Province	1,750	
Orissa	2,500	
Sind	1,000	

FOURTH SCHEDULE.

MAXIMUM YEARLY AMOUNTS (IN RUPEES) CHARGED ON THE REVENUES OF THE PROVINCES IN RESPECT OF CERTAIN MATTERS.

	Madras	Bombay	Bengal	The United Provinces	The Punjab	Bihar	The Central Provinces and Berar	Assam	The North-West Frontier Province	Sind	Orissa
1. Sumptuary Allowance..	18,000	25,000	25,000	15,000	12,000	6,000	6,000	6,000	6,000	8,000	6,000
2. Staff and Household :—											
(a) Military Secretary (or A.D.C.) and his establishment	1,12,000	1,36,000	1,21,000	1,16,000	88,000	75,000	61,000	63,000	68,000	59,000	40,000
(b) Band	43,000	45,000	50,000	—	—	—	—	—	—	—	—
(c) Bodyguard	1,26,000	78,000	1,00,000	—	—	—	—	—	—	—	—
(d) Surgeon and his establishment	36,000	33,600	34,800	—	—	—	—	—	—	—	—
(e) Maintenance and repairs of furnishings of official residences.	21,500	25,000	34,000	15,500	10,500	13,000	9,800	4,000	5,000	4,000	8,000
3. Contract Allowance, i.e., an allowance for miscellaneous expenses, including maintenance of motor cars	92,000	1,08,000	1,00,000	23,000	21,700	21,700	16,600	14,100	14,100	17,800	11,500
4. Tour Expenses	1,13,000	65,000	1,22,000	1,25,000	60,000	60,000	26,000	55,000	18,000	30,000	35,000

(18)
**THE GOVERNMENT OF INDIA (FEDERAL
LEGISLATURE AMENDMENT) ORDER, 1936.**
AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of December, 1936.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by subsection (4) of section three hundred and eight of the Government of India Act, 1935 (hereinafter in this Order referred to as "the Act"), His Majesty in Council is empowered to amend the provisions of the Act relating to the composition of the Federal Legislature:

AND WHEREAS it is expedient to amend Part II of the First Schedule to the Act for the purpose of correcting errors in the description of the States comprised in Division XVII of the Table of Seats, and in the statements of the population of the States comprised in that Division, and of the total population of all the Indian States included in the Table.

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on Him as aforesaid and of all other powers enabling Him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (FEDERAL LEGISLATURE AMENDMENT) ORDER, 1936".

2. The following sub-paragraph shall be added at the end of paragraph twelve of Part II of the First Schedule to the Act:—

"This paragraph shall have effect as if the State of Khaniadhana had been included in the Central India Agency on the first day of January, Nineteen hundred and thirty-five."

3. The fifth column in the Table of Seats appended to Part II of the First Schedule to the Act shall be amended as follows:—

(a) the population of the States comprised in Division XVII shall instead of being stated as "3,032,197" be stated as "3,047,129";

(b) the total of population of the States in the Table shall instead of being stated as "78,981,912" be stated as "78,996,844".

M. P. A. Hankey.

(19)

THE GOVERNMENT OF INDIA (FAMILY PENSION FUNDS) ORDER, 1936.

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of December, 1936.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and seventy-three of the Government of India Act, 1935 (in this Order referred to as "the Act") His Majesty in Council is empowered to provide for the vesting of certain family pension funds in Commissioners and for other matters in connection with those funds:

AND WHEREAS certain other provisions are made by the said section in connection with those funds:

AND WHEREAS by section three hundred and ten of the Act His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act to the provisions of the Act, to direct that the Act shall, during a specified period, have effect subject to adaptations and modifications:

AND WHEREAS difficulties will arise unless certain adaptations and modifications are made in the said section two hundred and seventy-three in relation to the period before the commencement of Part III of the Act:

AND WHEREAS the Public Trustee has consented to accept the trusts created by this order and to become a Commissioner thereunder accordingly:

AND WHEREAS a draft of this order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order and it is hereby ordered as follows:—

Short Title.

1. This order may be cited as "THE GOVERNMENT OF INDIA (FAMILY PENSION FUNDS) ORDER, 1936."

The Funds.

2. Not later than the first day of April, nineteen hundred and thirty-seven, two funds shall be formed, the first out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations, and the second out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules.

3. In this order the expression "the funds" means the Indian Military Widows' and Orphans' Fund, the Superior Services (India) Family Pension Fund, and the two funds directed to be formed by the provisions of the last preceding paragraph.

The Commissioners.

4. There shall be a body of Commissioners for each of the funds.

5. Each of the said bodies shall consist of five Commissioners, of whom one shall be the Public Trustee and four shall be appointed by the Secretary of State.

The Secretary of State shall so exercise his powers under this sub-paragraph as to secure that two of the Commissioners for each fund are persons who are, or have been, subscribers to that fund.

(2) Each of the Commissioners appointed by the Secretary of State shall be appointed for a period of four years, and shall be eligible for reappointment:

Provided that—

(a) in the case of each fund, two of the first four Commissioners appointed by the Secretary of State, to be selected by lot, shall retire after two years, but shall be eligible for reappointment;

(b) any Commissioner appointed by the Secretary of State may at any time, by notice in writing to the Secretary of State, resign his office, and the Secretary of State may terminate the appointment of any such Commissioner if satisfied that that Commissioner is for any reason unfit to perform, or unable properly to perform, the duties of his office.

6. (1) Each body of Commissioners may act notwithstanding any vacancy in their number.

(2) At any meeting of the Commissioners, three shall be a quorum; and, in the event of a difference of opinion, the decision of the majority of the Commissioners present shall be the decision of the Commissioners.

(3) Notwithstanding anything in the last preceding sub-paragraph the Commissioners may by rules of business provide that a meeting need not be held for the discussion and determination of any matter if, after consultation in writing the Commissioners are all agreed as to the decision to be taken.

(4) Any instrument shall be deemed to be validly executed by any of the said bodies of Commissioners if it is signed or sealed, as the case may be, by three or more of the Commissioners, of whom the Public Trustee shall be one; and any instrument signed or sealed on behalf of the Public Trustee in any manner authorised by the Public Trustee Act, 1906, and the rules made thereunder shall be deemed for the purposes of this sub-paragraph to be signed or sealed, as the case may be, by the Public Trustee.

7. (1) The said bodies of Commissioners shall be known respectively as the Commissioners for the Indian Military Widows' and Orphans' Fund, the Commissioners for the Superior Services (India) Family Pension Fund, the Commissioners for the Indian Military Service Family Pension Fund, and the Commissioners for the Indian Civil Service Family Pension Fund; and investments may be made and moneys held by them in the names respectively assigned to them by this sub-paragraph.

(2) Investments so made and moneys so held shall, on any change in the membership of the Commissioners, devolve to the Commissioners for the time being without transfer or assignment, and any authority or direction given by the Commissioners with respect to dividends, interest or other moneys accruing to the Commissioners shall remain valid notwithstanding any change in their membership.

(3) The production of notification in the London Gazette of the appointment of the Commissioners or of any change in the membership of the Commissioners shall be sufficient evidence thereof.

8. (1) There shall be paid to a Commissioner appointed by the Secretary of State out of the fund for which that Commissioner acts such remuneration, if any, as may be specified by the Secretary of State at the time of his appointment.

(2) The fees payable to the Public Trustee in respect of any fund shall be paid out of that fund,

9. Any Administrative expenses incurred by any of the said bodies of Commissioners shall be paid out of the fund in their hands.

Vesting of the funds in the Commissioners.

10. The balances existing at the end of March, nineteen-hundred and thirty-six, in respect of the Indian Military Widows' and Orphans' Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of section two hundred and seventy-three of the Act, be transferred to the appropriate Commissioners before the end of March, nineteen hundred and thirty-nine by such instalments, and with such interest, as the Secretary of State may determine. Any question as to the amount to be transferred under this paragraph to any body of Commissioners shall be decided by the Secretary of State.

11. Any sums paid under the last preceding paragraph before the commencement of Part III of the Act shall be paid out of the revenues of India, any sums paid thereunder after the commencement of Part III of the Act but before the establishment of the Federation shall be paid out of the revenues of the Governor-General in Council, and any sums paid thereunder after the establishment of the Federation shall be paid out of the revenues of the Federation.

12. The Commissioners shall invest so much of the funds respectively in their hands as is available for investment in such securities as they think fit, being either—

- (a) securities in which a trustee may invest trust moneys under the powers of section one of the Trustee Act, 1925, as extended by any subsequent enactment; or
- (b) the stocks, funds, bonds, mortgages, debentures or securities of any public body incorporated in the United Kingdom by or under any Act of Parliament or of the Parliament of Northern Ireland; or
- (c) the bonds, mortgages, debentures, debenture or rent-charge stock of any railway, gas, electric light or power company in the United Kingdom; or
- (d) the preference stock or shares of any such gas, electric light or power company which has paid a dividend on its

ordinary stock or shares at a rate of not less than three per cent. during each of the five years immediately preceding the date of the investment, and may, as and when they think fit, realise, convert or otherwise deal with any such securities:

Provided that—

(i) the proviso to subsection (1) of section two of the Trustee Act, 1925 which restricts the purchase by trustees of securities standing at a premium) shall not apply to the Commissioners;

(ii) the Commissioners shall not invest in real securities in the Irish Free State, or in the stock of the Bank of Ireland.

13. Any interest, dividends or other sums received by the Commissioners of any of the funds in respect of any such securities shall form part of that fund.

Functions of Secretary of State.

14. (1) The funds shall in all other respects be administered by the the Secretary of State, and all pensions payable out of any of the funds shall be paid by, or by authority of, the Secretary of State, and all contributions to any of the funds received by any person shall be accounted for to the Secretary of State.

(2) For the avoidance of doubt, it is hereby declared that the requirement of this paragraph that the funds shall be administered by the Secretary of State does not exempt the proper officers in India, Burma, Aden or elsewhere from the duty of collecting and accounting for the contributions, and paying the pensions, in the cases and classes of case in which contributions and pensions have heretofore been so collected and paid.

15. The Commissioners shall, as and when requested by the Secretary of State, pay to him out of the funds for which they are respectively responsible such sums as he may certify to be required by him for the purposes of the fund in question.

16. The Secretary of State shall pay over to the appropriate Commissioners all contributions to any of the funds made after the end of March, nineteen hundred and thirty-six:

Provided that nothing in this paragraph shall be construed as preventing the application by, or by authority of, the Secretary of State, and with the consent of the Commissioners, of a part of any such contributions for the purpose of meeting obligations falling to be met out of fund.

17. Notwithstanding anything in Part X of the Act or in the regulations or rules relating to any of the funds, the Secretary of State may, having obtained from an actuary a report on any of the funds, make such alterations in any pensions payable out of that fund as may appear to him after consideration of the report to be reasonably necessary in consequence of the transfer of that fund effected under this Order, including alterations in pensions granted (whether temporarily or not) before the making of the alteration.

The powers conferred on the Secretary of State by this paragraph shall be in addition to, and not in derogation of, any powers otherwise conferred on him by the said regulations and rules.

18. The fees of an actuary appointed at any time with the approval of the Secretary of State to make a report to the subscribers to, or beneficiaries under, any fund with respect to the position of that fund

THE GOVT. OF INDIA (FAMILY PENSION FUNDS) ORDER, 1936. cclv

may to such extent as the Secretary of State deems proper be paid out of that fund.

Objection to Transfer.

19. At any time before the end of March 1937, or before the expiration of such longer period as may in special circumstances be allowed by the Secretary of State in any particular case or class of cases, any of the existing subscribers or beneficiaries may make a written objection to the Secretary of State to the vesting of the fund in which he is interested in the Commissioners.

20. In the case of any existing beneficiary who has not attained the age of twenty-one years or is of unsound mind, objection may be made as aforesaid on his behalf by his parent or guardian, or, as the case may be, by any person who satisfies the Secretary of State that he has by law authority to receive on behalf of the beneficiary any pension payable to him out of the fund:

Provided that where under section three hundred and thirty-five of the Lunacy Act, 1890, or any corresponding enactment in force outside England payments from the Fund are being made to an institution or person having the care of the beneficiary, then, if the Secretary of State is satisfied that there is no person who would apart from this proviso be entitled to make objection on behalf of the beneficiary, objection may be made as aforesaid on behalf of the beneficiary by any person who satisfies the Secretary of State that he contributes towards the expense of maintaining the beneficiary.

21. In the case of any existing subscriber who is of unsound mind, objection may be made as aforesaid on his behalf by any person who satisfies the Secretary of State that he has by law authority to make such an objection on behalf of that subscriber or that he has by law authority to receive on behalf of the subscriber any pension payable to him out of the revenues of India.

Provided that where under section three hundred and thirty-five of the Lunacy Act, 1890, or any corresponding enactment in force outside England payments are being made from the revenues of India to an institution or person having the care of the subscriber, then, if the Secretary of State is satisfied that there is no person who would apart from this proviso be entitled to make objection on behalf of the subscriber objection may be made as aforesaid on behalf of the subscriber by his wife, or, if he has no wife, by, or as the case may be, by the guardian of any child of the subscriber who may become entitled to a pension from the Fund, (so, however, that no objection shall be made by, or by the guardian of, any such child without the consent of, or, as the case may be, of the guardians of, the other children who may become entitled to pensions from the Fund).

22. Where any objection is duly made as aforesaid, subsection (3) of section two hundred and seventy-three of the Act shall have effect as from the first day of April, nineteen hundred and thirty-six, in relation to the interest of the person by whom or on whose behalf the objection is made, and any necessary adjustments shall be made as respects payments made by, to or in connection with, that person on or after that date.

Temporary Adaptations and Modifications of Section 273.

23. As respects the period preceding the commencement of Part III of the Act, section two hundred and seventy-three of the Act shall have effect subject to the following adaptations and modifications:—

- (a) for the words "the Secretary of State," where they first occur in subsection (1), there shall be substituted the words "the Secretary of State in Council";
- (b) any reference in subsection (2) or subsection (3) to the Governor-General shall be construed as a reference to the Secretary of State in Council;
- (c) the reference in paragraph (a) of subsection (3) to the revenues of the Federation shall be construed as a reference to the revenues of India;
- (d) the reference in paragraph (b) of subsection (3) to the Secretary of State shall be construed as a reference to the Secretary of State in Council.

Miscellaneous.

24. This Order shall come into force on the date of the making thereof.

25. The date as from which, under subsection (1) of section two hundred and seventy-three of the Act, pensions payable under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules (being the pensions not heretofore payable out of any specific fund) are, subject to the provisions of subsection (3) of that section, to be payable out of the appropriate fund to be formed for the purposes of this Order and vested in Commissioners, shall be the date of the payment of the last instalment payable under paragraph ten of this Order; but the appropriate fund shall be debited with any payments of any such pension made before that date and after the end of March, nineteen hundred and thirty-six.

26. Anything to be done by or to the Secretary of State under this Order shall, until the commencement of Part III of the Act be done by or to the Secretary of State in Council.

Interpretation.

27. The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament, and subsection (6) of section two hundred and seventy-three of the Act shall apply with respect to this Order as it applies with respect to that section.

28. In this Order, except so far as the context otherwise requires, the expression "contributions" in relation to any of the funds includes references to any donation or fine payable under the rules or regulations relating to that fund, and references to subscribers or contributions to the funds include, in relation to the two funds directed to be formed by this Order, subscribers and contributions under the Indian Military Service Family Pension Regulations or, as the case may be, the Indian Civil Service Family Pension Rules.

29. References in this Order to the Secretary of State shall, as respects the period subsequent to the commencement of Part III of the Act, be construed as references to the Secretary of State acting with the concurrence of his advisers in accordance with the provisions of section two hundred and sixty-one of the Act.

M. P. A. Hankey.

(20)

THE GOVERNMENT OF INDIA (DEFENCE APPOINTMENTS) ORDER, 1936.

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of December, 1936.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and thirty-three of the Government of India Act, 1935, His Majesty in Council is empowered to require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the said Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said power and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (DEFENCE APPOINTMENTS) ORDER, 1936."

2. Appointments to the following offices shall be made by His Majesty:—

Royal Indian Navy:

Flag Officer Commanding.

Army:

General Officers Commanding-in-Chief, Commands.

Chief of the General Staff.

Adjutant-General.

Quartermaster-General.

Master-General of the Ordnance.

Officers Commanding Districts.

M. P. A. Hankey.

INDIA AND BURMA (EXISTING LAWS) ACT, 1937.

CHAPTER 9.

An Act to explain and amend sections two hundred and ninety-two and two hundred and ninety-three of the Government of India Act, 1935, and sections one hundred and forty-eight and one hundred and forty-nine of the Government of Burma Act, 1935.

[18th February, 1937.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) For the purposes of sections two hundred and ninety-two and two hundred and ninety-three of the Government of India Act, 1935, which provide for the existing laws of British India to continue in force therein after the date of the commencement of Part III of the said Act, subject to the power of His Majesty in Council to make such adaptations and modifications in any such law as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the said Act,—

Continuance and adaptation of certain existing laws in India and Burma. 26 Geo. 5. & 1 Edw. 8. c. 2.

- (i) a law passed or made before the said date by a Legislature or other competent Authority in British India, and not previously repealed, is, for the removal of doubts, hereby declared to be a law in force immediately before that date, notwithstanding that it, or parts of it, may not then be in operation, either at all or in particular areas;
- (ii) any such law which immediately before the said date has extra-territorial effect as well as effect in British India shall, subject to any such adaptations and modifications as aforesaid, continue to have extra-territorial effect;
- (iii) the power of His Majesty in Council to make in an existing Indian law such adaptations and modifications as aforesaid shall be deemed to include power to declare any such law, or any part thereof, to be repealed, if it appears to His Majesty in Council that its continuance is unnecessary or inexpedient in view of the provisions of the said Act;
- (iv) nothing in the said sections shall be construed as continuing any temporary Act in force beyond the date fixed for its expiration.

(2) Paragraphs (i) to (iv) of the preceding subsection shall apply also in relation to sections one hundred and forty-eight and one hundred and forty-nine of the Government of Burma Act, 1935 (being the sections of that Act corresponding to the said sections two hundred and ninety-two and two hundred and ninety-three), with the following adaptations—

- (a) references to British India and to an Indian law shall be construed respectively as references to Burma and to a Burma law;
- (b) for the words "in view of the provisions of the said Act" there shall be substituted the words "in view of the separation of India and Burma."

Short title.

2. This Act may be cited as "THE INDIA AND BURMA (EXISTING LAWS) ACT, 1937."

(22)

**STATUTORY RULES AND ORDERS. 1937 No.
INDIA AND BURMA.**

**THE INDIAN (FOREIGN JURISDICTION) ORDER, 1937.
AT THE COURT AT BUCKINGHAM PALACE.**

The 18th day of March, 1937.

PRESENT :

WHEREAS by the proviso to sub-section (1) of section two of the Government of India Act, 1935, (a) it is provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall, in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown:

AND WHEREAS provision is made by the said Act and the Government of Burma Act, 1935, (b), as to the authorities which are respectively to exercise on behalf of His Majesty the rights, authority and jurisdiction of His Majesty in, and in relation to, the tribal areas in India, and in and in relation to, areas in Burma which are not part of the territories of His Majesty:

AND WHEREAS it is accordingly expedient to amend the Indian (Foreign Jurisdiction) Order in Council, 1902, (c) (in this Order referred to as "the principal Order"):

NOW, THEREFORE, His Majesty, by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, (d) or otherwise in His Majesty vested, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

1. This Order may be cited as "THE INDIAN (FOREIGN JURISDICTION) ORDER IN COUNCIL, 1937".

2. (i) As from the commencement of Part III of the Government of India Act, 1935, the powers conferred by the principal Order on the Governor-General in Council shall, so far as they are connected with the exercise of the functions of the Crown in its relations with Indian States, be powers of His Majesty's Representative for the exercise of those functions of the Crown, and he may delegate those powers to such extent and in such manner as he thinks fit.

(ii) The person appointed to be His Majesty's Representative for the exercise of those functions of the Crown may, before the commencement of Part III of the said Act, make any rules, orders, delegations and appointments and issue any other instruments which he would have power to make or issue after the commencement of Part III of the said Act, but no such rule, order, delegation or appointment shall come into force until the commencement of Part III of the said Act.

(a) 26 Geo. 5 & 1 Edw. S. C. 2.

(b) 26 Geo. 5 & 1 Edw. S. C. 3.

(c) S. R. & O. 1902 (No. 466) p. 174.

(d) 53 & 54 Vict. C. 37.

(iii) Orders and other instruments made and executed in the name of the Crown Representative shall be authenticated in such manner as may be specified in the Rules to be made by him and the validity of an Order or Instrument which is so authenticated shall not be called in question on the ground that it is not an Order or Instrument made by the Crown Representative.

3. As from the commencement of Part III of the said Act and the Government of Burma Act, 1935, the principal Order shall cease to have effect as respects the tribal areas in India and any areas in Burma, without prejudice, however, to the validity of anything previously done thereunder:

Provided that any rules, orders, delegations, appointments or other instruments made or issued under the said Order shall continue in force, except so far as revoked or varied by the authority competent for the purpose under the Government of India Act, 1935, or the Government of Burma Act, 1935 as the case may be.

4. Save as aforesaid, the powers conferred by the principal Order on the Governor-General in Council shall continue to be exercisable on behalf of His Majesty by the Governor-General in Council until the establishment of the Federation of India and shall thereupon become exercisable on behalf of His Majesty by the Governor-General of India.

5. The Interpretation Act, 1889, (a), shall apply to the construction of this Order.

(23)

THE INDIA AND BURMA (BURMA MONETARY ARRANGEMENTS) ORDER, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section one-hundred and fifty-eight of the Government of India Act, 1935, (in this order referred to as "the India Act") His Majesty in Council is empowered to make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of that section, such provision as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of the India Act with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council:

AND WHEREAS by section one hundred and thirty-seven of the Government of Burma Act, 1935, (in this order referred to as "the Burma Act") His Majesty in Council is empowered to make such provision with respect to the monetary system of Burma and matters connected therewith or ancillary thereto as he thinks fit, and in particular, but without prejudice to the generality of that section, such provision as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of the Burma Act with the approval of the Secretary of State by the Governor of Burma in Council:

AND WHEREAS certain arrangements have been made with the approval of the Secretary of State between the Governor-General in Council and the Governor of Burma in Council with respect to the relations between the monetary systems of India and Burma after the separation of Burma from India:

AND WHEREAS by section two hundred and ninety-three of the India Act His Majesty in Council is empowered to provide that any law in force in British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accordance with the provisions of the India Act:

AND WHEREAS by section one hundred and forty-nine of the Burma Act His Majesty in Council is empowered to provide that any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consequential on the separation of India and Burma:

AND WHEREAS a draft of this order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the India Act and subsection (1) of section one hundred and fifty-seven of the Burma Act, and an address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

PART I.

Introductory.

1. This order may be cited as "THE INDIA AND BURMA (BURMA MONETARY ARRANGEMENTS) ORDER, 1937".

2. In this order, unless the context otherwise requires,—

"the Bank" means the Reserve Bank of India;

"the Governor-General" means the Governor-General of India;

"India rupee coin" means silver rupees which are for the time being legal tender in British India;

"India subsidiary coin" means coin of a lower denomination than one rupee which is for the time being legal tender in British India;

"India notes" means currency notes of the Government of India and bank notes of the Bank, other than Burma notes;

"Burma notes" means the Burma bank notes and the overprinted currency notes of the Government of India, for the issue of which by the Bank provision is made in Part II of this order;

"the Reserve Bank Act" means the Reserve Bank of India Act, 1934;

"separation" means the separation of India and Burma;

"legal tender", in relation to a note, means legal tender in payment or on account for the amount expressed therein;

and other expressions have the same meaning as in the Reserve Bank Act.

3. The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

4. Unless the context otherwise requires, any reference in this order to, or to any provisions of, the Reserve Bank Act shall be construed as a reference to that Act or those provisions as for the time being in force in India, and any reference in this order to, or to any provisions of, any other Act shall be construed as a reference to that Act or those provisions as for the time being in force in India or as for the time being in force in Burma, as the context and the circumstances may require; and if any such Act or provisions have been repealed and re-enacted, either with or without modifications, any reference thereto in this order shall be construed as a reference to the re-enacted Act or provisions as in force as aforesaid.

5. (1) This order shall come into force on separation.

(2) As respects the period between separation and the establishment of the Federation of India, references in this order to the Governor-General shall be deemed to be references to the Governor-General in Council.

PART II.

Provisions to have effect as part of the Law of Burma.

General.

1 The provisions of this Part of this order shall have effect as part of the law of Burma.

2. The Bank shall manage the currency of Burma and continue to carry on the business of banking in Burma, subject to the provisions of this Part of this order.

3. (1) Until the Governor of Burma otherwise determines, the standard monetary unit of Burma shall be the Indian rupee.

(2) If the standard monetary unit of Burma ceases to be the Indian rupee, any provisions of this Part of this order which refer to values stated in terms of rupees shall have effect subject to such consequential adaptations as may be prescribed by Act of the Legislature.

Provisions as to Government money, etc.

4. (1) The Bank shall accept moneys for account of the Government of Burma, make payments up to the amount standing to the credit of its account, carry out its exchange, remittance and other banking operations, including the management of the Public Debt, and generally afford to it similar facilities to those which the Bank affords to the Governor-General.

(2) The Government of Burma shall entrust the Bank with all its money, remittance, exchange and banking transactions in Burma and in particular shall deposit all its cash balances with the Bank free of interest;

Provided that nothing in this sub-paragraph shall prevent the Government of Burma from carrying on money transactions at places where the Bank has no branch or agency and from holding at those places such balances as it may require.

(3) The Government of Burma shall entrust the Bank with the management of the Public Debt of Burma and with the issue of any new loans.

(4) The conditions on which the Bank shall perform the functions mentioned in this paragraph shall be the same as those regulating similar transactions between the Governor-General and the Bank, subject, however, to such adaptations and modifications as may be agreed upon between the Government of Burma and the Bank or as may, in default of agreement, be prescribed by the Governor of Burma.

Particulars of any such adaptations or modifications shall be laid as soon as may be before both Chambers of the Legislature.

(5) The provisions of this paragraph apply with any necessary modifications in relation to the Federal Fund of the Federated Shan States:

Provided that the adaptations and modifications to be agreed on under sub-paragraph (4) of this paragraph shall be agreed on by the Governor-General and the Bank, and shall be laid before either Chamber of the Legislature:

5. The Bank shall not refuse to accept the moneys, and undertake the functions, which the Railway Board is by the Burma Act required to entrust to it.

Bank and Currency Notes.

6. (1) The Bank shall as soon as may be after separation issue bank notes of distinctive design, to be known as "Burma bank notes".

(2) Burma bank notes shall be expressed in terms of the standard monetary unit of Burma and shall be of such denominational values as the Governor of Burma may determine after consultation with the Central Board.

(3) The design, form and material of Burma bank notes shall be such as may be prescribed by the Governor of Burma after consultation with the Central Board.

(4) During the period of twelve months immediately following separation the Bank may, in lieu of issuing Burma bank notes, or Burma bank notes of any particular denomination, issue currency notes of the Government of India overprinted with the words "Legal tender in Burma only":

Provided that the said period may from time to time be extended, either generally or in relation to notes of particular denominations, by the Governor of Burma after consultation with the Central Board.

7. (1) Burma notes shall be legal tender in Burma:

Provided that on the recommendation of the Central Board the Governor of Burma may by notification in the Gazette of Burma declare that with effect from such date as may be specified in the notification any series of Burma notes of any denomination shall cease to be legal tender save at an office or the Bank.

(2) India notes shall continue to be legal tender in Burma for such period or periods, not being less than two years from separation, as the Governor of Burma may determine, or for such shorter period or periods as may be agreed between the Governor of Burma and the Bank, and thereafter such notes shall continue to be accepted at par at such places and for such further period or periods as may be determined by the Governor of Burma after consultation with the Bank:

Provided that India notes which have ceased in India to be legal tender save at an office or agency of the Bank shall not in Burma be legal tender save at an office or agency of the Bank.

(3) The Bank shall not re-issue Burma notes which are torn, defaced or excessively soiled.

8. (1) Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Bank or the Government of Burma the value of any lost, stolen, mutilated or imperfect India note or Burma note.

(2) The Bank may with the previous sanction of the Governor of Burma prescribe the circumstances in which, and the conditions and limitations subject to which, the value of lost, stolen, mutilated or imperfect Burma notes may be refunded as of grace and the rules made under this sub-paragraph shall be laid on the table of both Houses of the Legislature.

(3) The value of lost, stolen, mutilated or imperfect India notes may be refunded as of grace in Burma in the circumstances and subject to the conditions and limitation prescribed for the time being in that behalf as respects British India under section twenty-eight of the Reserve Bank Act.

9. (1) The Bank shall have the sole right to issue bank notes in Burma and the Government of Burma shall not issue any currency notes.

(2) No person in Burma other than the Bank shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money, on the bills, hundis, or notes payable to bearer on demand of any such person:

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff, or agent.

(3) Any person contravening the provisions of the last preceding sub-paragraph shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed; but no prosecution under this sub-paragraph shall be instituted except on complaint made by the Bank.

Coinage.

10. (1) India rupee coin and India subsidiary coin shall continue to be legal tender in Burma to the like extent and subject to the same conditions as immediately before separation for such period or periods, not expiring, in the case of any class of coins, sooner than two years from the introduction of corresponding Burma coins, as the Governor of Burma may determine, or for such shorter period or periods as may be agreed between the Governor of Burma and the Bank, and thereafter shall continue to be accepted at par at such places and for such further period or periods as may be specified by the Governor of Burma after consultation with the Bank:

Provided that India rupee coin shall not cease to be legal tender in Burma has aforesaid so long as under the provisions of this Part of this Order the Bank is bound to issue such coin on demand in Burma in exchange for legal tender notes.

(2) No Burma coins shall be issued except in pursuance of an Act of the Legislature, and so long as under the provisions of this Part of this Order the Bank is bound to issue India rupee coin on demand in Burma in exchange for legal tender notes, no Burma coins shall be issued of the same value as, or of greater value than, the India rupee.

(3) Any Burma coins issued shall on demand be supplied by the Governor of Burma to the Bank against payment of their nominal value in such quantities as will, in the opinion of the Bank, be required for circulation in Burma, and the Governor of Burma shall not put any coins into circulation in Burma except through the Bank in pursuance of a demand made under this sub-paragraph.

The Bank may deliver to the Governor of Burma any Burma coins which will not in its opinion be required for circulation in Burma against payment of their nominal value, and no Burma coins shall be disposed of by the Bank otherwise than for the purposes of circulation or by delivery to the Governor of Burma under this sub-paragraph.

(4) It shall be the duty of the Governor of Burma to send as soon as may be to the Governor-General notice of any proposal to introduce any Burma coins.

11. (1) Until the Governor of Burma otherwise determines, the Bank shall on demand issue India rupee coin in exchange for legal tender notes.

(2) The Bank shall on demand issue legal tender notes in exchange for legal tender coins.

(3) The Bank shall in exchange for legal tender notes of five rupees or upwards supply legal tender notes of lower value or legal tender coins in such quantities as may in the opinion of the Bank be required for circulation.

(4) If the Governor-General or, as the case may be, the Governor of Burma, at any time fails to supply coins to the Bank, the Bank shall be released from its obligations under this paragraph to supply such coins to the public.

13. Gold coins, coined at His Majesty's Royal Mint in England or at any mints established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in Burma, but such coins shall be received by the Bank at its offices, branches and agencies in Burma at the bullion value of such coins calculated at the rate of 8·47512 grains troy of fine gold per rupee.

13. The Indian Coinage Act, 1906, shall, until other provision is made by Act of the Legislature, have effect in Burma subject to the adaptations and modifications specified in Part I of the First Schedule to this Order and the enactments specified in Part II of that Schedule shall cease to have effect as part of the law of Burma:

Provided that nothing in this paragraph shall be construed as affecting the operation of any provision of this Part of this Order relating to the extent to which and the conditions subject to which India coins are to be legal tender in Burma.

Duties of Bank as to Exchange.

14. (1) The Bank shall sell to any person who makes a demand in that behalf at its office in Rangoon, and pays the purchase price in legal tender currency, sterling for immediate delivery in London at a rate not below one shilling and five pence and forty-nine sixty-fourths of a penny for a rupee:

Provided that no person shall be entitled to demand to buy an amount of sterling less than ten thousand pounds.

(2) The Bank shall buy from any person who makes a demand in that behalf at its office in Rangoon sterling for immediate delivery in London at a rate not higher than one shilling and six pence and three sixteenths of a penny for a rupee:

Provided that—

(a) no person shall be entitled to demand to sell an amount of sterling less than ten thousand pounds;

(b) no person shall be entitled to receive payment unless the Bank is satisfied that payment of the sterling has been made in London.

(3) The Bank shall provide any person who makes a demand in that behalf with remittance between its office in Rangoon and such office or offices in India as may be prescribed by the Central Board, in such amounts, at such fixed rate of exchange and subject only to such rate or rates of commission, as may be approved by the Governor-General and the Governor of Burma:

Provided that so long as the Bank is bound under this Part of this Order to issue on demand India rupee coin in exchange for legal tender notes, the rate of exchange shall be par.

Control of Scheduled Banks, etc.

15. (1) Every Burma scheduled bank as defined in this paragraph shall maintain with the Bank a balance, the amount of which shall not at the close of business on any day be less than five per cent. of the dem and liabilities, and two per cent. of the time liabilities, of that bank in Burma as shown in the latest return made under sub-paragraph (2) of this paragraph.

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For the purposes of this paragraph to liabilities of a Burma scheduled bank do not include its paid-up capital or reserves or any credit balance in its profit and loss account or the amount of any loan taken by it from the Bank.

(2) Every Burma scheduled bank shall send to the Bank a return signed by two responsible officers of the scheduled bank showing—

- (a) the amounts of its demand and time liabilities respectively in Burma,
- (b) the total amount held in Burma in India notes and Burma notes respectively,
- (c) the amounts held in Burma in India rupee coin, India subsidiary coin and Burma coin respectively,
- (d) the amounts of advances made and of bills discounted in Burma respectively, and
- (e) the balance held at the Bank,

at the close of business on each Friday, or where a Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day, and the return shall be sent not later than two working days after the date to which it relates:

Provided that where the Bank is satisfied that the furnishing of a weekly return under this sub-paragraph is impracticable in the case of any Burma scheduled bank by reason of the geographical position of that bank and its branches, the Bank may require that bank to furnish, in lieu of a weekly return, a monthly return to be dispatched not later than fourteen days after the end of the month to which it relates, giving the details specified in this sub-paragraph in respect of that bank at the close of business for the month.

(3) If at the close of business on any day before the day fixed for the next return the balance held at the Bank by any Burma scheduled bank is below the minimum prescribed in sub-paragraph (1) of this paragraph, that bank shall be liable to pay to the Bank in respect of each such day penal interest at the rate of three per cent. above the bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum, and if on the day fixed for the next return the balance is still below the prescribed minimum as disclosed by this return, the rate of penal interest shall be increased to a rate five per cent. above the bank rate, in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the prescribed minimum.

(4) Any Burma scheduled bank failing to comply with the provisions of sub-paragraph (2) of this paragraph shall be liable to pay to the Bank a penalty of one hundred rupees for each day during which the failure continues.

(5) The penalties imposed by sub-paragraphs (3) and (4) of this paragraph shall be payable on demand made by the Bank and, in the event of a refusal by the defaulting bank to pay on such a demand, may be levied by a direction of the High Court; but such a direction shall be given only upon application made in that behalf to the Court by the Bank with the previous sanction of the Governor of Burma.

(6) In this paragraph "Burma scheduled bank" means a bank for the time being included in the Second Schedule to this Order; and the Governor of Burma shall, by notification in the Gazette of Burma, direct

the inclusion in the said Schedule of any bank not already included therein which carries on the business of banking in Burma, and which—

- (a) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and
- (b) is a company as defined by section two of the Indian Companies Act, 1913, or a corporation or a company incorporated by or under any law in force in any place outside Burma.

and shall by a like notification direct the exclusion from the said Schedule of any Burma scheduled bank, the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or which goes into liquidation or otherwise ceases to carry on banking business:

Provided that no bank shall be included in the said Schedule if it is a scheduled bank within the meaning of the Reserve Bank Act.

(7) The Governor of Burma may at any time by notification in the Gazette of Burma amend the Second Schedule to this Order for the purpose of correcting any misdescription of any bank.

16. (1) The Bank may require any Burma co-operative bank with which it has transactions under section seventeen of the Reserve Bank Act to furnish such returns as are referred to in sub-paragraph (2) of the last preceding paragraph, and while such a requirement is in force the provisions of sub-paragraphs (4) and (5) of that paragraph shall apply so far as may be to that co-operative bank as if it were a Burma scheduled bank.

(2) In this Part of this Order "Burma co-operative bank" means—

(a) the principal society in Burma which is registered or deemed to be registered under the Co-operative Societies Act, 1912, and of which the primary object is the financing of the other societies in Burma which are or are deemed to be so registered;

(b) any other central co-operative society declared for the time being by the Governor of Burma to be a Burma co-operative bank for the purposes of this Part of this Order.

Miscellaneous.

17. (1) The Bank shall not be liable for the payment of any stamp duty in Burma in respect of Burma notes or India notes.

(2) The Bank shall not be liable to pay Burman income-tax or super-tax on any of its income, profits or gains:

Provided that nothing in this sub-paragraph shall affect the liability of any shareholder in respect of Burman income-tax or super-tax.

(3) For the purposes of any provisions of the Indian Income-tax Act, 1922, as in force in Burma, which relate to the levy and refund of income-tax, any dividends paid under section forty-seven of the Reserve Bank Act shall be deemed to be "interest on securities".

18. (1) The Reserve Bank Act shall cease to be part of the law of Burma, and the status of the Bank shall be that of a corporation existing only by virtue of the law of British India and capable of suing and being sued as such in Burma; and accordingly effect shall be given to the said Act by courts in Burma only in so far as, under the rules and principles of law determining the cases in which law other than Burma law is to be applied in Burma, the proper law to be applied is the law of India.

(2) Nothing in the Indian Companies Act, 1913, shall apply to the Bank.

(3) Nothing in this paragraph shall—

(a) revive in Burma the enactments repealed by the Reserve Bank Act;

(b) affect, as respects Burma, the amendment made in section eleven of the Indian Companies Act, 1913, by section sixty-one of the Reserve Bank Act.

19. (1) If any person in Burma makes a false statement in any declaration furnished by him in pursuance of a requisition under subsection (1) of section fifty-six of the Reserve Bank Act, he shall be deemed in Burma to have committed the offence of giving false evidence defined in section one hundred and ninety-one of the Indian Penal Code and shall be punishable under the second paragraph of section one hundred and ninety-three of that Code.

(2) Nothing contained in any declaration furnished under the said subsection (1) shall operate to affect the Bank with notice of any trust, and no notice of any trust expressed, implied or constructive shall be receivable by the Bank.

20. References in this Part of this Order to the Central Board shall, in the event of the supersession of that Board under section thirty of the Reserve Bank Act, be construed as references to the agency to which the general superintendence and direction of the affairs of the Bank are entrusted under that section.

21. (1) Subject to the provisions of this paragraph, this Part of this Order shall cease to have effect on the expiration of two years from the date on which a notice determining the operation thereof is given to the Governor-General by the Governor of Burma or to the Governor of Burma by the Governor-General, so, however, that no such notice shall be given before the thirty-first day of March, nineteen hundred and thirty-eight:

Provided that, if in the opinion of the Governor of Burma the Bank fails to fulfil any of the obligations imposed upon it by this Part of this Order, or if the Reserve Bank Act is amended in any manner which in the opinion of the Governor of Burma is seriously prejudicial to the interest of Burma, the Governor may give notice to the Governor-General determining the operation of this Part of this Order at any time, and that notice shall take effect on such date as may be specified therein.

(2) The expiration of this Part of this Order shall not revive any enactment which has ceased to be in force as part of the law of Burma and shall not affect the provisions of this Part of this Order declaring that the status of the Bank is to be that of a corporation existing by virtue of the law of British India and declaring the extent to which effect is to be given by courts in Burma to the Reserve Bank Act.

PART III.

Provisions to have effect as part of the Law of British India.

1. Until other provision is made by any Act of the Indian Legislature or the Federal Legislature, the Reserve Bank Act shall have effect in British India subject to the adaptations and modifications specified in the Third Schedule to this Order.

2. While Part II of this Order remains in force, it shall be the duty of the Governor-General to send as soon as may be to the Governor of Burma notice of any proposal to introduce, or move an amendment to, a Bill in the Indian Legislature or the Federal Legislature which affects the

coinage or currency of British India or the Federation or the constitution of functions of the Bank.

PART IV.

Adjustments between Governments, etc., and other Miscellaneous Provisions.

Interpretation of Part IV.

1. (1) In this Part of this Order, unless the context otherwise requires—

“note ratio fraction” for a specified period means the fraction of which the denominator is the average amount of the India notes and Burma notes shown as being in circulation in the weekly accounts of the Bank relating to dates falling within that period and the numerator is the average amount of the Burma notes shown as being in circulation by those accounts;

“the appropriate fraction” means, in relation to the transitional period, the note ratio fraction for the last year of that period and, in relation to any subsequent financial year, the note ratio fraction for that year;

“Governor-General’s bank profits” in relation to any period means the sum of—

- (a) any amounts paid in that period to the Governor-General by the Bank under section forty-seven, or subsection (2) of section thirty-seven, of the Reserve Bank Act, and by the Issue Department under subsection (2) of section thirty-four of that Act, and
- (b) any other profits accruing in that period to the Governor-General by reason of any revaluation of the gold held by the Bank,

less any amount debited to the Governor-General in that period under subsection (2) of the said section thirty-four;

“silver proceeds” and “silver deficiency” in relation to any period mean the amount by which the net receipts of the Governor-General for that period from sales of silver exceed or, as the case may be, fall short of the sums expended by him for that period on purchases of silver, and for the purposes of this definition any transfer of India rupee coin under section thirty-six of the Reserve Bank Act shall be deemed to be a purchase or sale, as the case may be;

“gold” and “silver” mean respectively gold coin and gold bullion and silver coin and silver bullion;

“the Burma debt to India” means any liabilities imposed on the revenues of Burma under section one hundred and thirty-four of the Burma Act;

“the transitional period” means the first three financial years after separation;

Provided that if it appears to the Governor of Burma at the end of the said three years that India notes are still returning from circulation in Burma to a considerable extent, the Governor of Burma may, within one month after the end of the said three years, give notice to the Governor-General that the transitional period is to continue and it shall continue accordingly until the end of the financial year in which in the opinion of the Governor of Burma the amount of India notes returning from circulation in Burma has become negligible.

(2) If, during the transitional period or during a financial year, either of the following events occurs, that is to say—

(a) Part II of this Order expires, or

(b) Burma coins intended to supersede India rupee coin in Burma are put into circulation.

then, for the purposes of any provision of this Order relating to, or coming into effect on the expiration of, a period which ceases on the happening of that event, any reference in this Part of this Order to the transitional period or to that year shall be construed as a reference to so much thereof as precedes the happening of the event.

(3) For the purpose of computing the silver proceeds or the silver deficiency for any period, the Governor-General shall, in respect of any silver sold by him in India, be taken to have received either—

(a) the rupee equivalent at the rate of exchange of the day of the London price of silver at the time when the contract was made, after deducting any brokerage and other charges or rebates actually incurred by the Governor-General in effecting the sale, or

(b) the actual sum received by him after deduction of any such brokerage and other charges or rebates and of any import duty on silver in force at the time when the contract was made,

whichever is the greater.

References in this sub-paragraph to the date when the contract was made shall, in relation to rupee coin delivered to the Bank under sub-section (2) of section thirty-six of the Reserve Bank Act, be construed as references to the date of the delivery of the coin.

Division of Governor-General's Bank Profits during the currency of Part II.

2. (1) This paragraph shall have effect in relation to the period during which Part II of this Order is in force.

(2) At the end of the transitional period and of each subsequent financial year there shall be paid by the Governor-General to the Government of Burma the appropriate fraction of the Governor-General's bank profits for that period, or, as the case may be, that year.

(3) During the transitional period, the Governor-General shall pay to the Government of Burma the following sums on account—

(a) at the end of the first year, a sum ascertained by applying to the Governor-General's bank profits for that year the note ratio fraction for the last month thereof;

(b) at the end of the second year, such sum as will, with the previous payment on account, amount to a sum ascertained by applying to the Governor-General's bank profits for the first two years the note ratio fraction for the last month of the second year,

and so on at the end of each year except the last year.

(4) Notwithstanding anything in this paragraph, so much of any sums payable to the Government of Burma thereunder as is ascribable to dealings by the Bank in Gold or the revaluation of the Bank's holding of Gold shall in lieu of being paid to the Government of Burma be credited as a capital payment in reduction of the Burma debt to India; and if in any financial year subsequent to the transitional period the proportion of the Governor-General's bank profits which is ascribable to dealings by the Bank in gold or the revaluation of the Bank's holding of gold is, in the opinion of the Governor-General or the Governor of Burma, exceptionally large, the

Governor-General or the Governor, as the case may be, may, within one month after the end of the year, require that the amount to be credited under this sub-paragraph at the end of that year shall be computed by applying to the Governor-General's bank profits for that year the note ratio fraction for such period as may be agreed by the Governor-General and the Governor of Burma, or as may, in default of agreement, be determined by arbitration.

Division of Silver Proceeds and Silver Deficiencies pending the supersession of India rupee coin in Burma.

3. (1) This paragraph shall have effect in relation to the period beginning on separation and ending on the expiration of Part II of this Order or on the putting into circulation of Burma coins which are intended to supersede India rupee coin in Burma, whichever first occurs.

(2) At the end of the transitional period and of each subsequent financial year there shall be credited as a capital payment in reduction of the Burma debt to India an amount equal to the appropriate fraction of the silver proceeds for that period or, as the case may be, that year.

(3) During the transitional period there shall be credited as capital payments in reduction of the said debt the following sums on account of the reduction provided for by the last preceding sub-paragraph—

(a) at the end of the first year, a sum ascertained by applying to the silver proceeds for that year the note ratio fraction for the last month thereof:

(b) at the end of the second year, such sum as will with the sum previously credited on account amount to a sum to be ascertained by applying to the silver proceeds for the first two years the note ratio fraction for the last month of the second year.

and so on at the end of each year except the last year.

(4) If in any financial year subsequent to the transitional period the silver proceeds are, in the opinion of the Governor-General or the Governor of Burma, exceptionally large, the Governor-General or the Governor, as the case may be, may, within one month after the end of the year, require that the amount to be credited under this paragraph at the end of that year shall be computed by applying to the silver proceeds for that year the note ratio fraction for such period as may be agreed by the Governor-General and the Governor of Burma or as may, in default of agreement, be determined by arbitration.

(5) If there is a silver deficiency for the transitional period or for any year or years comprised therein or for any year subsequent thereto, the foregoing provisions of this paragraph shall apply in relation to that deficiency as they apply in relation to silver proceeds, except that a debit on capital account shall be made to the Government of Burma in relation to the Burma debt to India instead of a credit, and that, if the deficiency is for the transitional period or for any year or years comprised therein, the provisions of sub-paragraph (3) of this paragraph shall have effect with such other adaptations as are necessary to secure that, in computing the credits and debits made during and at the end of the transitional period, due account is taken of the credits and debits previously made during that period.

Division of the Profit and Loss on the circulation of Nickel and Bronze Coins pending the supersession of India nickel and bronze coins in Burma.

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4. (1) This paragraph shall have effect in relation to the period beginning on separation and ending on the expiration of Part II of this Order or on the putting into circulation of Burma coins which are intended to supersede the India nickel and bronze coins in Burma, whichever first occurs.

(2) At the end of each financial year there shall be paid by the Governor-General to the Government of Burma the profit, as calculated by the Auditor-General of India, on the net amount of the India nickel and bronze coins which are actually passed into circulation in Burma during that year, less the loss, as calculated by the Auditor-General of India, on the destruction of any India nickel and bronze coins returned from Burma to the Indian Mints in that year and destroyed as not being fit for re-issue.

(3) If in any financial year the amount of India nickel and bronze coins returning from circulation in Burma exceeds the amount of India nickel and bronze coins actually passed into circulation in Burma in that year, the Government of Burma shall pay to the Governor-General the loss attributable to that fact, as calculated by the Auditor-General of India, together with the loss, as calculated by the Auditor-General of India, on the destruction of any India nickel and bronze coins returned from Burma to the Indian Mints in that year and destroyed as not being fit for re-issue.

Division of Silver Stocks on the supersession of India rupee coin in Burma.

5. On the expiration of the period in relation to which paragraph three of this Part of this Order has effect, the Governor-General shall transfer to the Government of Burma a proportion of his stocks of silver to be determined by applying thereto either—

- (a) if the transitional period was still current on the day before this paragraph takes effect, the appropriate fraction for the transitional period; or
- (b) in any other case, the appropriate fraction for the financial year current on that day:

Provided that if, within one month after that day, either the Governor-General or the Governor of Burma so requires, the fraction to be applied shall be the note ratio fraction for such period as may be agreed between the Governor-General and the Governor of Burma or as may, in default of agreement, be determined by arbitration.

Disposal of Retired India Coins, and Burma's Share of the Silver Stocks.

6. (1) Any India coins retired from Burma (whether from circulation, from the Bank's balances, from Treasury balances or from small coin depots) by reason of the introduction of corresponding Burma coins shall be disposed of as follows—

- (a) if and so far as the Governor of Burma so desires and the Mints in India are able to undertake the work, they shall be recoined with Burma designs at the Mints in India free of charge, except that any additional expense arising from a material alteration in the numbers and composition of the coins shall be defrayed by the Government of Burma;
- (b) any India subsidiary coin not so recoined shall be delivered to the Governor-General against payment to the Government of Burma of its bullion value increased by an amount representing the cost to India of coining the same amount of coin in the same form;

- (c) any India rupee coin not so recoined shall not be disposed of as coin, but the silver content thereof shall be disposed of in such manner as the Governor of Burma may think fit:

Provided that the Governor shall not dispose by sale of any such silver before the first day of January, nineteen hundred and thirty-eight, otherwise than in accordance with an agreement to be concluded with the Governor-General which shall, among other things, determine, by reference to the respective stocks of silver held by the parties to the agreement, the maximum amounts to be sold by them respectively in any year.

(2) Sub-paragraph (1) of this paragraph shall apply in relation to India rupee coin transferred to the Government of Burma under the last preceding paragraph as it applies to retired India rupee coin, and shall apply in relation to silver bullion so transferred as it applies in relation to retired India rupee coin which is not recoined in India thereunder.

Division of Assets and Liabilities on expiration of Part II.

7. (1) On the expiration of Part II of this Order, the provisions of this paragraph shall take effect except so far as may be otherwise agreed between the Governor-General and the Governor of Burma, or, as the case may be, between the Governor of Burma and the Bank.

(2) The Bank shall be absolved from all liability in respect of Burma notes and the revenues of Burma shall be liable in respect thereof, and any guarantee thereof of the Government of India shall be deemed to be a guarantee of the Government of Burma; and there shall be transferred from the issue Department of the Bank to the Government of Burma assets which, as valued for the purposes of the Reserve Bank Act, have together a value equal to the total liability in respect of the Burma notes outstanding on the expiration of the said Part II other than any notes which are deemed for the purposes of this subparagraph to have gone out of circulation.

For the purposes of this and the next succeeding sub-paragraph a note shall be deemed to have gone out of circulation if and only if on the expiration of the said Part II forty years or more have elapsed since the end of the financial year in which it was issued.

(3) India notes which were immediately before the expiration of Part II of this Order legal tender in Burma or in respect of which legal rights of encashment in Burma existed immediately before that date shall be accepted by the Governor of Burma at par at such places and for such period or periods as may be specified by the Governor of Burma after consultation with the Bank; and there shall from time to time on the demand of the Governor of Burma be transferred from the Issue Department of the Bank to the Government of Burma assets, which, as valued for the purposes of the Reserve Bank Act, have together a value equal to the amount of the notes accepted by the Governor of Burma under this sub-paragraph other than notes which are deemed for the purposes of this sub-paragraph to have gone out of circulation.

(4) Any assets transferred under this paragraph shall include gold, sterling securities, India rupee coin and rupee securities in the proportions in which assets of those classes respectively were, immediately before the expiration of Part II of this Order, held by the Issue Department of the Bank:

Provided that unless the Governor of Burma otherwise agrees—

- (a) the securities so transferred shall not include any trade bills originating in India;
- (b) the total amount of rupee trade bills and the total amount of sterling trade bills transferred shall not bear to the total

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amount of the securities transferred a greater proportion than the total amount of the rupee trade bills or, as the case may be, the sterling trade bills held immediately before the expiration of the said Part II in the Issue Department bears to the total amount of the securities then held therein.

In this paragraph "securities" includes trade bills, and "rupee securities" and "rupee trade bills" include respectively securities and trade bills expressed in the standard monetary unit of Burma, whether or not that unit is still the Indian rupee.

(5) Any India rupee coin transferred under the foregoing provisions of this paragraph shall be disposed of in accordance with the provisions of the last preceding paragraph as if it were retired rupee coin.

(6) If and in so far as distinctive Burma coins have not previously been introduced, they shall forthwith be introduced and all India coins shall, as soon as may be, be retired from Burma and disposed of in accordance with the provisions of the last preceding paragraph:

Provided that India coins shall continue to be accepted at par at such places in Burma and for any such further period or periods as may be specified by the Governor of Burma.

(7) The Governor of Burma shall, if the Bank so desires, take over from the Bank all or any of the property held by the Bank in Burma for the purpose of carrying on its business, against payment of the value of that property as shown in the books of the Bank if Part II of this Order expires at or before the expiration of three years from separation, or, if the said Part II expires at a later date, on such terms as may be agreed with the Bank, or, in default of agreement, decided by arbitration.

(8) If the agreement made between the Bank and the Imperial Bank in pursuance of section forty-five of the Reserve Bank Act is still in force, the Governor of Burma and the Bank shall enter into separate agreements with the Imperial Bank which shall be in substitution for the said agreement but without prejudice to rights acquired or liabilities incurred prior thereto.

The agreements so to be made shall be such as together to secure as nearly as may be that the Imperial Bank continues to act in relation to Government business and currency operations in India and Burma in the like manner, for the like period and on not less favourable conditions as if Part II of this Order had not expired, and if the Governor of Burma, the Bank and the Imperial Bank are not able to agree upon the terms of the said agreements, the terms thereof shall be such as may be decided by arbitration:

Provided that the agreement so to be made between the Governor of Burma and the Imperial Bank shall be such as to secure that if in the opinion of the Governor of Burma the Imperial Bank has failed either to fulfil its duties which it owes to the Governor of Burma in relation to the conduct of Government business and currency operations in Burma or to maintain a sound financial position, the Governor may issue instructions to the Imperial Bank with reference either to the rights acquired by the Governor under the agreement or to any matter which in the opinion of the Governor involves the security of the Government moneys in the custody of the Imperial Bank, and in the event of the Imperial Bank disregarding those instructions may terminate the relationship between him and the Imperial Bank.

(2) There shall be credited as a capital payment in reduction of the Burma debt to India an amount calculated as follows—

- (a) the surplus assets of the Bank (including the Reserve Fund) shall be valued as on the day immediately preceding the expiration of Part II of this Order;
- (b) there shall be deducted from the value as so ascertained the sums payable in respect of the financial year current on that day to the Governor-General and the shareholders of the Bank;
- (c) the amount to be credited shall be ascertained by applying to the difference either—
 - (i) if the transitional period was still current on the day immediately preceding the expiration of Part II of this Order, the appropriate fraction for the transitional period, or
 - (ii) in any other case, the appropriate fraction for the financial year current on that day:

Provided that if within one month after that day either the Governor-General or the Governor of Burma so requires, the fraction to be applied to the said difference shall be the note ratio fraction for such period as may be agreed between the Governor-General and the Governor, or as may, in default of agreement, be determined by arbitration.

Provisions as to Agreements and Arbitrations.

8. The Governor-General, the Governor of Burma and the Reserve Bank may, as respects the rights and liabilities conferred and imposed on them respectively by the preceding provisions of this Part of this Order, agree on the substitution for any of the said provisions of such other provisions as may be specified in the agreement; and if in the opinion of the Governor-General or the Governor of Burma unforeseen developments have rendered any of the said provisions inequitable the Governor-General or, as the case may be, the Governor, may, in default of such agreement as aforesaid, require the question whether, and if so what, provisions should be substituted for the provisions aforesaid to be referred to arbitration, and in the event of any such arbitration effect shall be given to the award of the arbitrator accordingly.

9. Any dispute arising under this Part of this Order between the Governor-General and the Governor of Burma shall be decided by arbitration.

10. (1) Any matter which under this Part of this Order is to be decided by arbitration shall be referred to and decided by such person as may be agreed upon by the parties to the dispute or as may, in default of agreement, be appointed by the Secretary of State.

(2) The Arbitration Act, 1889, shall not apply to any such arbitration.

Miscellaneous.

11. The agreement made in pursuance of section forty-five of the Reserve Bank Act between the Bank and the Imperial Bank of India shall have effect subject to the following adaptations—

- (a) references to India and British India shall be construed as including references to Burma and British Burma;
- (b) references to the Governor-General a Council in relation to his general banking business, his accounts, and sums due to or from him, and references to Government in relation to receipts and disbursements dealt with on account of Government shall be construed as including references to the

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- Governor of Burma (both in his dealings with the revenues of Burma and in his dealings with the Federal Fund of the Federated Shan States) and the Burma Railway Board;
- (c) references to banks included in the Second Schedule to the Reserve Bank Act shall be construed as including references to Burma scheduled banks.

M. P. A. Hankey.

FIRST SCHEDULE.

ADAPTATION AND REPEAL AS RESPECTS BURMA OF INDIAN ENACTMENTS RELATING TO COINAGE.

PART I.

ADAPTATIONS AND MODIFICATIONS OF THE INDIAN COINAGE ACT, 1906.

The title and preamble shall be omitted.

In section one, for the words "the Indian Coinage Act, 1906" there shall be substituted "the Burma Coinage Act", and all words subsequent to those words shall be omitted.

In section two, paragraphs (b) and (d) shall be omitted; and for paragraph (c) there shall be substituted the following paragraph—

(c) "prescribed" means prescribed by the Indian Coinage Act, 1906, as in force immediately before the separation of Burma from India, or by the rules then in force thereunder.

Sections three to fifteen A shall be omitted.

In sections sixteen and twenty, for the words "under the authority of the Governor-General in Council" there shall be substituted the words "under the authority of the Governor-General of India or the Governor-General of India in Council", and for the words "by the Governor-General in Council or by the Local Government" there shall be substituted the words "by the Governor".

For section twenty-one there shall be substituted the following section:—

21.—(1) The Governor may make rules to carry out the purposes and objects of this Act and of the provisions of Part II of the India and Burma (Burma Monetary Arrangements) Order, 1937, and in particular and without prejudice to the

generality of the foregoing power such rules may provide for the guidance of persons authorised to cut or break coin under sections sixteen and twenty of this Act.

(2) Every such rule shall be published in the Gazette and on such publication shall have effect as if enacted in this Act.

Sections twenty-three and twenty-four shall be omitted.

PART II.

ENACTMENTS REPEALED.

The Native Coinage Act, 1876.

The Indian Coinage (Amendment) Act, 1918.

The Bronze Coin (Legal Tender) Act, 1918.

Sections one to five of the Indian Coinage (Amendment) Act, 1919.

The Indian Coinage (Amendment) Act, 1924.

SECOND SCHEDULE.

Burma Scheduled Banks.

Bank of Upper Burma.

U Rai Gyaw Thoo and Company, Akyab.

Messrs. Balthazar and Son.

The Overseas-Chinese Banking Corporation.

(24)

**THE GOVERNMENT OF INDIA (HIGH COURT JUDGES)
ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by subsection (1) of section two hundred and twenty of the Government of India Act, 1935 (hereafter in this order referred to as "the Act") it is provided that the Judges appointed by His Majesty to any High Court in British India, together with any additional Judges appointed by the Governor-General under subsection (3) of section two hundred and twenty-two of the Act, shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that Court:

AND WHEREAS by section two hundred and twenty-one of the Act it is provided that the Judges of the several High Courts shall be entitled to such salaries and allowances, including allowances, for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

AND WHEREAS a draft of this order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act, and an address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order:

NOW, THEREFORE, His Majesty, in exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council order, and it is hereby ordered as follows:—

Introductory.

1. This order may be cited as "THE GOVERNMENT OF INDIA (HIGH COURT JUDGES) ORDER, 1937", and shall come into operation on the first day of April, nineteen hundred and thirty seven.

2. (1) In this order, except where it is otherwise expressly provided or the context otherwise requires—

"High Court" means a court which is a High Court for the purposes of the Act;

"Chartered High Court" means a High Court other than a Chief Court or a Judicial Commissioner's Court;

"Chief Justice" includes a Chief Judge and a Judicial Commissioner;

"Judge" includes a Chief Justice, an acting Chief Justice, an acting Judge an additional Judge, a Judicial Commissioner, an acting Judicial Commissioner, an Assistant Judicial Commissioner, an acting Assistant Judicial Commissioner and an Additional Assistant Judicial Commissioner;

"acting Chief Justice" means a Judge appointed under sub-section (1) of section two hundred and twenty-two of the Act to perform the duties of a Chief Justice;

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"acting Judge" means a person appointed under subsection (2) of the said section to act as a Judge;

"additional Judge" means a person appointed under subsection (3) of the said section to act as an additional Judge;

"actual service" includes—

(i) time spent by a Judge on duty as a Judge, or in the performance of such other functions as he may be directed by the Governor-General or the Governor to discharge;

(ii) vacations, excluding any time during which the Judge is absent on leave; and

(iii) joining time on transfer from one High Court to another;

"service for pension" includes—

(i) actual service;

(ii) on one month or the amount actually taken, whichever is less, of each period of leave on full allowances;

(iii) joining time on return from leave out of India.

(2) In the calculation of service for the purposes of this order previous service at any date or dates as acting Judge or additional Judge shall be reckoned as service as Judge; but, save as expressly provided, previous service as acting Chief Justice shall not be reckoned as service as Chief Justice.

(3) Any period of leave taken by a Judge before the commencement of this order under the rules then applicable to him as an acting Judge or additional Judge shall for the purposes of this order be treated as if it were leave taken by him under this order.

(4) The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

Maximum Number of Judges.

3. The Maximum number of Judges in each High Court shall be as specified in the First Schedule to this order.

Expenses for Equipment and Voyage.

4. There shall be paid to a Judge who was permanently resident in Europe at the date of his appointment an allowance of five hundred pounds for expenses in respect of equipment and travelling on appointment.

Salaries.

5. There shall be paid to a Judge in respect of time spent on actual service salary at the rate specified in the Second Schedule to this order.

Leave.

6. Subject to the provisions of this order, leave granted to a Judge may be at his option either—

(a) leave on full allowances; or

(b) leave on half allowances; or

(c) leave partly on full allowances and partly on half allowances.

7. (1) A leave account in terms of leave on half allowances shall be kept for each Judge and in that account there shall be credited to him one-fourth of the time spent by him on actual service, and be debited to him all leave with allowances taken by him.

(2) For the purposes of this paragraph and of sub-paragraph (1) of the next succeeding paragraph, any period of leave on full allowances shall be reckoned as double that period of leave on half allowances.

8. (1) The aggregate amount of leave granted to a Judge during his whole period of service as such shall not exceed in terms of leave on half allowances three years.

(2) The aggregate amount of leave on full allowances granted to a Judge during his whole period of service as such shall not exceed one twenty-fourth of the period spent by him on actual service.

(3) The maximum period of leave granted at any one time shall be, in the case of leave on full allowances, five months, and, in the case of leave with allowances of any kind, sixteen months.

9. Subject to the provisions of sub-paragraph (1) of the preceding paragraph, leave on half allowances may be granted to a Judge in excess of the amount at his credit—

(i) on medical certificate; or

(ii) for not more than six months and not more than once during the whole period of his service as a Judge, otherwise than on medical certificate.

10. (1) The monthly rate of leave allowance payable to a Judge while on leave on full allowances shall be for the first month of such leave a rate equal to the monthly rate of his salary, and thereafter two thousand two hundred and twenty rupees if resident in Asia during his leave, and two hundred and twenty-two pounds if resident outside Asia.

(2) The monthly rate of leave allowance payable to a Judge while on leave on half allowances shall be one thousand one hundred and ten rupees if resident in Asia during his leave, and one hundred and eleven pounds if resident outside Asia.

11. There shall be payable to a Judge in respect of joining time on his return from leave out of India an allowance at the rate of one thousand one hundred and ten rupees a month in lieu of salary.

12. Extraordinary leave not exceeding six months in duration may be granted not more than once during the period of a Judge's service as such in excess of any leave permissible under the foregoing provisions of this Order, but no salary or allowances shall be payable during or in respect of such leave.

13. (1) A Judge may be allowed to combine vacation on full salary with leave, if—

(a) where the vacation consists of one continuous period, the leave is taken either at the commencement or at the end of the vacation but not at both;

(b) where the vacation is divided into two separate periods, the leave is taken for the interval, or part of the interval, between the two periods of that vacation, or for the interval, or part of the interval, between the second period of that vacation and the commencement of the next ensuing vacation.

(2) Permission to combine vacation with leave shall not be granted under this paragraph if it will be necessary to appoint an acting Judge during the period of the vacation.

14. If a Judge overstays his leave or any vacation, whether combined with leave or not, he shall receive no salary for the period of his absence in excess of the leave granted to him or beyond the end of the vacation, as the case may be:

Provided that, if such absence is due to circumstances beyond his control, the period thereof may be treated as leave and be debited to his leave account.

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15. The power to grant, refuse, revoke or curtail leave shall be vested in the Governor of the Province in which the principal seat of the High Court is situate, exercising his individual judgment, after consultation with the Chief Justice.

Passages.

16. (1) A Judge who is a member of the Indian Civil Service shall have such rights in respect of passages for himself and his wife and children, if any, as under the rules of that Service he would have had if he had not been appointed a Judge, his service as Judge being treated as service for the purpose of determining those rights.

(2) Any other Judge whose domicile at the date of his appointment was elsewhere than in Asia shall have such rights in respect of passages for himself and his wife and children, if any, as, under the rules for the time being applicable to persons who became members of the Indian Civil Service on that date, he would have had if he had become a member thereof on that date and if his service as Judge were treated as service therein for the purpose of determining those rights:

Provided that

- (i) if he has received an allowance for equipment and voyage on appointment he shall not be entitled to a passage (whether for himself, or his wife or children) until the completion of five years, nor to a second passage until the completion of ten years, total service as a Judge; and
- (ii) if he dies while serving as a Judge, his wife and children shall not be entitled to any concession in respect of passages in addition to the gratuity for which provision is made in this Order.

Pensions.

17. (1) Subject to the provisions of this Order, a pension shall be payable to a Judge on his retirement if, but only if, either—

- (a) he has completed not less than 12 years' service for pension; or
- (b) he has completed not less than 7 years' service for pension and has attained the age of sixty; or
- (c) he has completed not less than 7 years' service for pension and his retirement is medically certified to be necessitated by ill-health.

(2) The Secretary of State may for special reasons direct that any period not exceeding three months shall be added to a Judge's service for pension:

Provided that a period so added shall be disregarded in calculating any additional pension under Part I or Part II of the Third Schedule to this Order.

18. (1) Subject to the provisions of this Order, the pension payable to a Judge who on his retirement is entitled to a pension shall be calculated—

- (a) in the case of a Chief Justice or Judge who is not a member of the Indian Civil Service, or of a Chief Justice of a Chartered High Court who is a member of the Indian Civil Service, in accordance with the scale and rules in Part I of the Third Schedule to this Order.
- (b) in the case of a Judge who is a member of the Indian Civil Service and is not a Chief Justice of a Chartered High

Court, in accordance with the scale and rules in Part II of the said Schedule.

19. (1) The provisions of this paragraph shall apply in relation to a Judge who is a member of a civil service of the Crown in India.

(2) If any such Judge is eligible for a pension under paragraphs 17 and 18 of this Order he shall elect to receive either that pension or such pension as is referred to in the next succeeding sub-paragraph.

(3) If any such Judge is not eligible for a pension under paragraphs 17 and 18 of this Order or, being eligible for such a pension elects not to receive that pension, the pension payable to him shall be—

(a) the pension for which he would have been eligible under the rules of his civil service if he had not been appointed a Judge, his service as a Judge being treated as service for the purpose of calculating that pension; and

(b) if he is not a member of the Indian Civil Service, a special additional pension of five hundred rupees per annum in respect of each completed year of service for pension in any one or more of the High Courts, but not in any case exceeding two thousand five hundred rupees per annum.

(4) The pension payable to any such Judge part of whose service includes service as a Chief Justice shall in no case be less than the pension for which he would have been eligible if all his service for pension had been service rendered otherwise than as Chief Justice.

20. The rules for the time being in force with respect to the grant of extraordinary pensions and gratuities and privileges in regard to special disability leave and passages to, or in respect of, members of the Indian Civil Service who may suffer injury or die as a result of violence shall apply in relation to a Judge, whether a member of a civil service or not, subject, however, to the modification that references in those rules to tables of injury gratuities and pensions and of family gratuities and pensions, shall be construed as references to the tables in the Fourth Schedule to this Order.

21. Pensions expressed in sterling only shall, if paid in India, be converted at such rate of exchange as the Secretary of State may from time to time prescribe:

Provided that nothing in this paragraph shall affect any specific privilege in respect of the conversion of sterling pensions which was conferred by any Rules previously in force on persons who on the 1st February, 1921, were members of a civil service of the Crown in India.

22. The Civil Pensions (Commutation) Rules applicable to persons appointed by the Secretary of State shall with any necessary modifications apply to Judges.

23. There shall be paid to the legal personal representatives of any Judge who dies while in possession of his office and who was at the time of his appointment permanently resident in Europe

(a) if the death occurred more than six months after the date of his assumption of office a sum equal to six months' salary in addition to any salary due to the Judge at the date of his death; or

(b) if the death occurred within six months after his assumption of office or during his voyage to India for the purpose of first assuming office, such sum as with any amount received by or due to the Judge on account of salary will make up the amount of one year's salary.

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24. Save as may be otherwise expressly provided in the relevant rules relating to the grant of extraordinary pensions and gratuities, the authority competent to grant pension to a Judge under the provisions of this Order shall be the Governor of the Province in which the High Court is situated, exercising his individual judgment.

Travelling Allowances.

25. A Judge shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty in India and such reasonable facilities in connexion with travelling as the Governor of the Province in which the principal seat of the High Court is situated may from time to time in his individual judgment prescribe.

Subsidiary Conditions of Service.

26. Subject to the provisions of this Order and of any other Order in Council made under the Act, the conditions of service of a Judge shall be determined by the rules for the time being applicable to an officer of non-Asiatic domicile or, as the case may be, of Asiatic domicile appointed by the Secretary of State to a civil service of the Crown in India and holding the rank of Secretary to the Government of the Province in which the principal seat of the High Court is situated:

Provided that nothing in this paragraph shall have effect so as to give to a Judge who is a member of a civil service of the Crown in India less favourable terms in respect of any of his conditions of service than those to which he would be entitled as a member of his civil service if he had not been appointed a Judge, his service as Judge being treated as service for the purpose of determining those terms.

Provisions as to existing Judges.

27. (1) The foregoing provisions of this Order (other than paragraph three) shall not apply in relation to a Judge who—

(a) was serving as a Judge in India at the commencement of this Order; or

(b) was serving as a Judge in Burma at that date and is subsequently appointed to be a Judge in India.

(2) The conditions of service of any such Judge as aforesaid shall continue to be governed by the rules to which he was subject immediately before the commencement of this Order and, for the purposes of those rules, service by any such Judge as a Judge in Burma, whether before or after the said date, and leave taken by him during such service, shall be treated as service rendered in India and as leave taken during service so rendered.

(3) For the purposes of this paragraph a person who was serving as Acting Judge or additional Judge at the commencement of this Order shall be deemed to have been serving as a Judge at that date if, but only if, his service as such Acting Judge or additional Judge continued without interruption until his subsequent permanent appointment as Judge.

M. P. A. Hankey.

FIRST SCHEDULE.

(Paragraph 3.)

NUMBER OF JUDGES.

The maximum number of Judges in the several High Courts shall be as shown in the following table. In each case the number is exclusive of the Chief Justice, the Chief Judge or the Judicial Commissioner, but includes any additional Judges or additional Assistant Judicial Commissioners.

<i>Court</i>	<i>Maximum number.</i>
The High Court at Madras	15 Judges.
The High Court at Bombay	13 "
The High Court at Calcutta	19 "
The High Court at Allahabad	12 "
The High Court at Lahore	15 "
The High Court at Patna	11 "
The High Court at Nagpur	7 "
The Chief Court of Oudh	5 "
The Court of the Judicial Commissioner of Sind	5 Assistant Judicial Commissioners.
The Court of the Judicial Commissioner of the North- West Frontier Province	2 "

SECOND SCHEDULE.

(Paragraph 5.)

SALARIES OF JUDGES.

<i>Rank of Judge.</i>	<i>Salary per annum. Rs.</i>
Chief Justice of the High Court at Calcutta	72,000
Chief Justice of the High Courts at Madras, Bombay, Allahabad, Patna and Lahore	60,000
Chief Justice of the High Court at Nagpur	50,000
Judge of the High Courts at Calcutta, Madras, Allahabad, Patna and Lahore; Chief Judge of the Chief Court of Oudh	48,000
Judge of the Chief Court of Oudh; Judicial Commissioner of Sind	42,000
Judge of the High Court at Nagpur	40,000
Judicial Commissioner of the North-West Frontier Province	39,000
Assistant Judicial Commissioner of Sind or of the North-West Fron- tier Province	36,000

In this Schedule "Chief Justice", "Chief Judge" and "Judicial Commissioner" include respectively an acting Chief Justice, an acting Chief Judge and an acting Judicial Commissioner, "Judge" includes an acting or an additional Judge, and "Assistant Judicial Commissioner" includes an acting or additional Assistant Judicial Commissioner.

THIRD SCHEDULE.

(Paragraph 18.)

PENSIONS OF JUDGES.

PART I.

1. The provisions of this Part of this Schedule apply to a Chief Justice or Judge who is not a member of the Indian Civil Service and also to a Judge who is a member of that Service and is Chief Justice of a Chartered High Court.
2. The pension payable to such a Judge who has completed twelve years' service for pension, including not less than six years' service as Chief Justice of one or more of the Chartered High Courts' other than Nagpur, shall, if six years or more of his service as Chief Justice has been rendered in the High Court at Calcutta be eighteen hundred pounds per annum and, in any other case, fifteen hundred pounds per annum.
3. Subject as aforesaid, the pension payable to a Judge to whom the provisions of this Part of this Schedule apply shall be the basic pension for which provision is made in the next succeeding paragraph increased by the additional pension, if any, to which he is entitled under the subsequent provisions of this Part of this Schedule.
4. The basic pension to which such a Judge shall be entitled shall be—
 - (a) for the first seven completed years of service for pension, £375 per annum; and
 - (b) for each subsequent completed year, a further sum of £75 per annum: Provided that his basic pension shall in no case exceed £750 per annum.
5. For the purpose of calculating additional pensions, service as a Judge shall be classified as follows:—
 - Grade I.—Service as Chief Justice in the High Court at Calcutta:
 - Grade II.—Service as Chief Justice in any Chartered High Court other than those at Calcutta and Nagpur:

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Grade III.—Service as Chief Justice in the High Court at Nagpur:
Grade IV.—Service as a puisne Judge in any Chartered High Court, other than that at Nagpur; and

Grade V.—Service as a puisne Judge in the High Court at Nagpur and any service in the Chief Court of Oudh.

6. For each completed year of service for pension in any grade mentioned in the last preceding paragraph the Judge shall be entitled to the additional pension specified in relation to that grade in the second column of the Table hereunder printed:

Provided that the aggregate amount of his basic and additional pensions shall not exceed the amount specified in the third column of the said table in relation to the highest grade in which he has rendered service for not less than one completed year

TABLE.

<i>Service.</i>	<i>Additional pension per annum</i>	<i>Maximum aggregate pension.</i>
	£	£
Grade I	75	1,800
Grade II	55	1,500
Grade III	40	1,250
Grade IV	35	1,200
Grade V	20	1,000

7. A Judge who has rendered service for pension in two or more grades may claim that any period of service less than a completed year rendered by him in one grade, or any portion of any such period, shall be treated for the purposes of the last preceding paragraph as service rendered by him in a lower grade.

8. If a Judge who has served as acting Chief Justice of a Chartered High Court is subsequently appointed Chief Justice of that Court or of any other Chartered High Court, his service as an acting Chief Justice shall for the purposes of this part of this Schedule be treated as service as Chief Justice of the Court in which the acting service was rendered:

Provided that service as acting Chief Justice of the High Court at Calcutta shall be treated as service as Chief Justice of Court of which the Judge was at the date of his retirement Chief Justice.

PART II.

1. The provisions of this Part of this Schedule apply to a Judge who is a member of the Indian Civil Service and is not a Chief Justice of a Chartered High Court

2. The pension payable to such a Judge shall be—

- (a) the pension to which he is entitled under the ordinary rules of the Indian Civil Service, his service as Judge being treated as service therein; and
- (b) the additional pension, if any, to which he is entitled under either of the two next succeeding paragraphs.

3. If his service for pension includes service for not less than seven completed years in any one or more of the Chartered High Courts, other than that at Nagpur, he shall be entitled to an additional pension in accordance with the following scale:—

	<i>Per annum</i>
	£
for 7 completed years of service in one or more of those Courts	100
for 8 completed years of service in one or more of those Courts	120
for 9 completed years of service in one or more of those Courts	140
for 10 completed years of service in one or more of those Courts	160
for 11 completed years of service in one or more of those Courts	180
for 12, or more, completed years of service in one or more of those Courts	200

4. If his service for pension includes service for not less than seven completed years in any one or more of the High Courts and some part of that service, but less than seven completed years has been rendered in one or more of the Courts mentioned in the preceding paragraph, he shall be entitled to an additional pension of £15 per annum in respect of each completed year of service rendered in one or more of the Courts so mentioned.

FOURTH SCHEDULE.

(Paragraph 20.)

INJURY GRATUITIES AND PENSIONS.

Officer.	Gratuity.		Annual pension. Higher scale.		Annual pension. Lower scale.	
	Rs.	£	Rs.	£	Rs.	£
Chief Justice or Acting Chief Justice of the High Court at Madras, Bombay, Calcutta, Allahabad, Lahore, Patna or Nagpur.	27,000	2,025	5,400	405	4,700	352
Judge, or Acting or Additional Judge, of a High Court, other than a Chief Justice or Acting Chief Justice of the Courts mentioned above.	15,000	1,125	4,700	352	4,000	300

FAMILY GRATUITIES AND PENSIONS.

A.—Widows.

Officer.	Gratuity.		Annual pension.	
	Rs.	£	Rs.	£
Chief Justice or Acting Chief Justice of the High Court at Madras, Bombay, Calcutta, Allahabad, Lahore, Patna or Nagpur.	17,000	1,275	5,000	375
Judge or Acting or Additional Judge of a High Court, other than a Chief Justice or Acting Chief Justice of the Courts mentioned above.	13,500	1,012	4,000	300

B.—Children.

		Annual Child's Pension.	
		Rs.	£
If Child is motherless	..	550	41
If Child is not motherless	..	320	24

(25)

**THE INDIA AND BURMA (TRANSITORY PROVISIONS)
ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section three hundred and ten of the Government of India Act, 1935 (hereafter in this order referred to as "the India Act"), His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act to the provisions of that Act, to direct that the India Act shall, during a limited period, have effect subject to adaptations and modifications, to make with respect to a limited period temporary provision for ensuring that during and after the transition there are available to all Governments in India sufficient revenues to enable the business of those Governments to be carried on, and to make other temporary provisions for the purpose of removing any difficulties arising in relation to the transition.

AND WHEREAS it is provided by paragraph two of the Third Schedule to the India Act that such provision shall be made for enabling the Governors of Provinces to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council:

AND WHEREAS by subsection (2) of section three hundred and nine of the India Act His Majesty in Council is empowered to revoke or vary any order in Council previously made under that Act:

AND WHEREAS by section one hundred and fifty-six of the Government of Burma Act, 1935 (thereafter in this order referred to as "the Burma Act"), His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act to the provisions of the Burma Act, to make temporary provision for the purpose of removing any difficulties arising in relation to the said transition:

AND WHEREAS a draft of this order was laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the India Act, and subsection (1) of section one hundred and fifty-seven of the Burma Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:—

Introductory.

1. This order may be cited as "The INDIA AND BURMA (TRANSITORY PROVISIONS) ORDER, 1937."

2. The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

Provisions applicable only to India.

3. (1) For a period of two years from the commencement of Part III of the India Act, the provisions of subsection (2) of section one hundred and forty-three of that Act (which authorises the continuance until provision to the contrary is made by the Federal Legislature, of certain provincial taxes falling within the Federal List) shall have effect as if the reference to the first of January nineteen hundred and thirty-five were a reference to the commencement of the said Part III.

(2) Nothing in this paragraph shall continue any taxation beyond the time for which it would continue if the India Act had not been passed.

4. In every Province notwithstanding anything contained in the India Act or in any order in Council made thereunder, but subject to any provision to the contrary which may be made by an Act of the Indian, the Federal or the Provincial Legislature passed in the exercise of the powers respectively conferred on them by the India Act—

(a) any tax, fine, penalty or other sum of whatever nature required by or under any law as in force immediately before the commencement of Part III of the India Act to be credited to any local fund or other fund shall during the two financial years next following the commencement of the said Part III, continue to be so credited and shall not, during those years, be deemed to be part of the revenues of the Province;

(b) any expenditure from provincial revenues, the amount of which is prescribed by or under any law, as in force immediately before the commencement of the said Part III, shall, in the said two financial years, be deemed to be expenditure charged on the revenues of the Province.

5. For the avoidance of doubt it is hereby declared that so much of the Road Development Fund, and so much of the Fund for the Economic Development and Improvement of Rural Areas, as remain in the hands of the Governor-General in Council immediately before the commencement of Part III of the India Act, will, notwithstanding anything in section one hundred and seventy-three of that Act, continue to be held by him for the same purposes as theretofore.

6. (1) In the case of Orissa and Sind there shall be charged on the revenues of the Province, in addition to the amounts directed to be charged thereon by the Government of India (Governors' Allowances and Privileges) Order, 1936, such sums as the Governor, exercising his individual judgment, may deem it necessary to expend in the provision and furnishing of his official residences; and the Governor shall exercise his individual judgment as respects any question arising in connection with the provision and furnishing of the said residences.

(2) In this paragraph "official residences" has the same meaning as in the Government of India (Governors' Allowances and Privileges) Order, 1936, and "provision", in relation to an official residence, includes the reconstruction or improvement of a residence existing at the commencement of Part III of the India Act.

(3) This paragraph shall cease to have effect on the expiration of three years from the commencement of Part III of the India Act.

7. Notwithstanding any thing in sub-paragraph (2) of paragraph three of the Government of India (Commencement and Transitory

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Provisions) order, 1936, subsection (2) of section one hundred and eighty-one of the India Act shall come into force on the commencement of Part III of that Act:

Provided that, until the establishment of the Federal Railway Authority, references in the said subsection to the Authority shall be construed as references to the Governor-General in Council.

8. (1) The provisions of this paragraph shall have effect for a period of one year from the commencement of Part III of the India Act:

Provided that the Governor-General in Council or, as the case may be, His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States, may at any time direct that those provisions shall cease to have effect as respects any Province either generally, or in relation to any particular function or class of functions, or in relation to any particular law or enactment.

(2) Where any functions, which immediately before the commencement of Part III of the India Act were, under any existing Indian law, functions of the Governor or the Local Government of a Governor's Province, are transferred by or under the India Act to, or to some authority or officer nominated or appointed by, the Federal Government, the Governor shall continue to discharge those functions, subject to the like control by the Governor-General in Council as was exercisable by him immediately before the commencement of the said Part III.

Nothing in this sub-paragraph shall affect the operation of subsection (2) of section one hundred and forty-three of the India Act.

(3) The Chief Commissioner of a Chief Commissioner's Province shall discharge therein any functions which under any existing Indian law as for the time being in force are functions of a Provincial Government.

(4) Where any functions, which, for the purposes of the India Act, are functions of the Crown in its relations with Indian States, were immediately before the Commencement of Part III of that Act being discharged by the Governor or the Local Government of, or some officer serving in connection with the affairs of, a Province, the Governor or, as the case may be, that officer, shall continue to discharge those functions, subject to the like control by His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States as were exercisable immediately before the commencement of the said Part III by the Governor-General in Council.

9. Paragraphs 9 and 10 of the Government of India (Commencement and Transitory Provisions) Order, 1936, are hereby repealed.

Provisions applicable both to India and Burma.

10. Notwithstanding the separation of India and Burma, the Indian Patents and Designs Act, 1911, shall, for a period of two years from the date of separation, have effect both in Burma and in India as if Burma, had continued to be part of India, and accordingly references in that Act to the Advocate-General, to the High Court and to district courts shall, during that period, include references to the Advocate-General of Burma, the High Court at Rangoon and district courts in Burma, and the Governor of Burma shall be included among the authorities to whom certain documents are to be sent under section seventy-two of that Act:

Provided that nothing in this paragraph shall restrict any right of the Federal or the Indian Legislature or the Legislature of Burma to amend or repeal the said Act as respects India or Burma, as the case may be, with effect from before the expiration of the said period.

M. P. A. Hankey.

**THE GOVERNMENT OF INDIA (ADAPTATION OF ACTS OF
PARLIAMENT) ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by subsection (5) of section three hundred and eleven of the Government of India Act, 1935 (hereafter in the recitals to this Order referred to as "the Act") it is provided that any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts or authorities in, or to matters relating to the government or administration of, India or British India, shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of the Act or of the Government of Burma Act, 1935:

AND WHEREAS by subsection (2) of section one hundred and seventy-eight of the Act it is provided that all enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as are referred to in subsection (1) of that section shall in relation to those loans, guarantees and obligations continue to have effect with certain substitutions and with such other modifications and such adaptations as His Majesty in Council may deem necessary:

AND WHEREAS under section three hundred and twenty of the Act His Majesty by Order in Council has appointed the first day of April, nineteen hundred and thirty-seven, as the date on which the provisions of the Act, other than the provisions of Part II thereof, are subject to any exceptions mentioned in the Order, to come into force:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE GOVERNMENT OF INDIA (ADAPTATION OF ACTS OF PARLIAMENT) ORDER", 1937, and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. The Acts of Parliament referred to in the Schedule to this Order shall have effect subject to the adaptations and modifications specified in the said Schedule.

3. In any Act of Parliament passed before the commencement of this Order and not referred to in the Schedule thereto references to the revenues of India shall be construed, in relation to the period after the establishment of the Federation of India, as references to the revenues of the Federation and, in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, as references to the revenues of the Governor-General in Council.

4. The provisions of this Order which adapt or modify any Act by transferring functions to another authority shall not render invalid any order, byelaw, rule or regulation duly made, or anything duly done, before the commencement of this Order and any such order, byelaw, rule, regulation or thing may be revoked, varied or undone in like manner, to the like extent and in the like circumstances as orders, byelaws, rules, regulations or things made or done by the authority to which the functions are transferred.

5. Nothing in the Aden Colony Order, 1936, shall be construed as requiring that references in Acts of Parliament to India or British India shall continue to be construed as including references to Aden.

M. P. A. Hankey.

THE SCHEDULE.

PART I.

The Interpretation Act, 1889.

(52 & 53 Vict. c. 63.)

In section eighteen, the definitions of "British India" and "India" shall be omitted; and in the definition of "Governor" the words "and India" shall be omitted and after the words "any other British possession" there shall be inserted the words "outside British India."

After section eighteen there shall be inserted the following section:—

Special definitions "18-A.—(1) In this Act and in every other Act, whether relating to India, passed before or after the commencement of this Act,—

- (i) the expression "British possession", when used in relation to British territories in India, shall, unless the contrary intention appears, mean British India as a whole, and references, in whatever words, to territories of the Crown abroad shall as respects India be construed accordingly;
- (ii) the expression "Governor" shall, when used in relation to British India as a whole or to India as a whole, mean the Governor-General;
- (iii) the expression "Governor-General" shall, when used in relation to British India or to India,—
 - (a) in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, mean the Governor-General in Council;
 - (b) in relation to any period after the commencement of the said Part III, be construed as including a reference to the Governor of a Province in India acting within the scope of any authority given to him under Part VI of the said Act;
- (iv) the expression "Indian legislature" and, when used in relation to British India or to India, the expression "legislature" shall mean the authority, other than the Imperial Parliament, competent to make laws for British India, or for the relevant part of British India.

(2) This section applies for the interpretation of the Government of India (Adaptation of Acts of Parliament) Order, 1937, but it does not apply for the interpretation of the Government of India Act, 1935, or the Government of Burma Act, 1935, nor, save as aforesaid, for the interpretation of any Order in Council made under either of those Acts, notwithstanding that that Order may provide generally that this Act shall apply for the interpretation thereof as it applies for the interpretation of an Act of Parliament.

PART II.

*General enactments.**The Criminal Law (India) Act, 1828.*

(9 Geo. 4. c. 74).

In sections one, seven and eight, references (in whatever words) to the British territories under the government of the East India Company shall be construed as references to British India, British Burma, Aden and the Straits Settlements.

The Slave Trade Act, 1843.

(6 & 7 Vict. c. 98.)

At the end of section four there shall be inserted the following subsection:—

“(2) In the case of British India, any such writ as aforesaid may be addressed to the chief justice, or other chief judge, of any court which is a High Court for the purposes of the Government of India Act, 1935.”

The Chinese Passengers Act, 1855.

(18 & 19 Vict. c. 104.)

In section one, the words “not being under the government of the East India Company”, and in sections eight and ten the words “or in the territories of the East India Company”, shall be omitted.

The Evidence by Commission Act, 1859.

(22 Vict. c. 20.)

At the end of section five there shall be inserted the following sub-section:—

“(2) For the purposes of this Act the expression ‘Supreme Court’ means, as respects India, a court which is a High Court for the purposes of the Government of India Act, 1935, and, as respects Burma, the High Court at Rangoon.”

The Indian Securities Act, 1860.

(23 & 24 Vict. c. 5.)

In section one for the words “by the Secretary of State in Council” there shall be substituted the words “by the Governor-General”.

The Admiralty Jurisdiction (India) Act, 1860.

(23 & 24 Vict. c. 88.)

For section one there shall be substituted the following section:—

Application of
principal Act to Bri-
tish India and British
Burma.

“1. The Admiralty Offences (Colonial) Act, 1849, shall apply to British India and British Burma as it applies to colonies.”

The Colonial Laws Validity Act, 1865.

(28 & 29 Vict. c. 63.)

In section one, for the words “and such territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the government of India” there shall be substituted the words “British India and British Burma”.

The Documentary Evidence Act, 1868.

(31 & 32 Vict. c. 37.)

In section five, in the definition of “British colony and possession” the words from “and such” to “India” shall be omitted, and at the end of the section there shall be inserted the following subsection:—

“(2) For the purposes of this Act, British India as a whole and also each Governor's Province and Chief Commissioner's Province thereof shall be regarded as separate British possessions.”

The Colonial Prisoners Removal Act, 1869.

(32 & 33 Vict. c. 10.)

In section two, for the words “such territories as may for the time being be vested in Her Majesty by virtue of any Act of Parliament for the government of India” there shall be substituted the words “British India or British Burma”.

The Extradition Act, 1870.

(33 & 34 Vict. c. 52.)

In section twenty-three, after the words “of India” there shall be inserted the words “or, as the case may be, of the Governor of Burma”; the words “in Councils shall be omitted and after the words “British India” there shall be inserted the words “or with Burma”.

In section twenty-six, in the definition of “governor” the words “and includes the governor of any part of India” shall be omitted.

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The Foreign Enlistment Act, 1870.
(33 & 34 Vict. c. 90.)

In section thirty, in the definition of "The Governor" the words "or the governor of any presidency" shall be omitted, and for the words "and where a British possession consists," there shall be substituted the words "and as respects a British possession which consists."

The Slave Trade Act, 1873.
(36 & 37 Vict. c. 88.)

In section two, at the end of the definition of "governor" there shall be inserted the following words:—

"Provided that as respects British India it means the Governor General."

The Courts (Colonial) Jurisdiction Act, 1874.
(37 & 38 Vict. c. 27.)

In section two, for the words from "or the Channel Islands" to "India and" there shall be substituted the words "the Channel Islands, British India or British Burma, but shall include", and at the end of that section there shall be inserted the following section:—

Application of Act to British India and British Burma. 2-A. This Act applies in relation to each Governor's Province and Chief Commissioner's Province of British India and to British Burma as it applies in relation to a colony."

The Slave Trade Act, 1876.
(39 & 40 Vict. c. 46.)

In section two, for the words "If the Governor-General of India in Council shall at a meeting for making laws and regulations amend" there shall be substituted the words "If the Legislature of India shall amend"; and for the words "the Secretary of State for India" there shall be substituted the words "the Secretary of State".

In section three, for the words "section 330 of Act 10 of 1872 passed by the Governor-General of India in Council and" there shall be substituted the words "Chapter XL of the Indian Act V of 1898"; for the words "the Governor-General of India in Council or any Indian Government" there shall be substituted the words "His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States or of the Governor-General"; and for the words "Her Majesty's Indian dominions" there shall be substituted the words "British India, British Burma or Aden".

After section three there shall be inserted the following sections:—

Application of Act to Burma. 3-A. (1) The provisions of this Act shall apply to Burma subject to the modifications specified in this section.

(2) In section one, for the words "of any Prince or State in India in alliance with Her Majesty" there shall be substituted the words "a native of any part of Burma not forming part of British Burma"; and for the words "British India" there shall be substituted the words "British Burma".

(3) In section two, for the words "the Legislature of India" there shall be substituted the words "the Burma Legislature".

(4) In section three, for the words "every High Court in India" there shall be substituted the words "the High Court at Rangoon"; for the words "And every High Court" there shall be substituted the words "And the High Court"; for the words from "agent of" to the words "alliance with Her Majesty" there shall be substituted the words "agent of the Governor in the said parts"; and for the words "jurisdiction in India" there shall be substituted the words "jurisdiction in Burma".

(5) For any reference to the Indian Penal Code and for the reference to Chapter XL of the Code of Criminal Procedure there shall be substituted a reference to the Code or Chapter in question as adapted or modified under the Government of Burma Act, 1935, and in force as part of the law of Burma immediately after the commencement of that Act:

Provided that, if the Code of Criminal Procedure is repealed and re-enacted in Burma, either with or without modifications, the reference to the said Chapter XL shall be construed as a reference to the corresponding provisions of the re-enacted Code as for the time being in force in Burma.

Application of Act to Aden. 3-B. (1) The provisions of this Act shall apply to Aden subject to the modifications specified in this section.

(2) In section one, the words "or of any Prince or State in India in alliance with Her Majesty" shall be omitted and for the words "British India" there shall be substituted the word "Aden".

(3) In section two, for the words "the Legislature of India" there shall be substituted the words "any authority competent to make laws for Aden"; after the word "unless", where it first occurs, there shall be inserted the words "(in the case of a law not made by Order in Council)", and for the words "amending Act" there shall be substituted the words "amending law".

(4) In section three, for the words "every High Court in India", there shall be substituted the words "the Supreme Court of Aden"; for the words "And every High Court" there shall be substituted the words "And the Supreme Court"; for the words from "agent of" to the words "alliance with Her Majesty" there shall be substituted the words "agent of the Governor in the said parts", and for the words "jurisdiction in India" there shall be substituted the words "jurisdiction in or for Aden".

(5) Any reference to the Indian Penal Code shall be construed as a reference to that Code as in force in Aden immediately after the commencement of the Aden Colony Order, 1936, and the reference to Chapter XL of the Code of Criminal Procedure shall be construed as a reference to that Chapter as for the time being in force in Aden, or, if the said Code is repealed and re-enacted in Aden, either with or without modifications, as a reference to the corresponding provisions of the re-enacted Code as for the time being in force in Aden.

Section five shall be omitted.

The Colonial Fortifications Act, 1877.

(40 & 41 Vict. c. 23.)

In section three, for the words "India as defined for the purposes of the Acts for the time being in force relating to the Government of India" there shall be substituted the words "British India or British Burma".

The Colonial Stock Act, 1877.

(40 & 41 Vict. c. 59.)

In section twenty-six, for the words "India as defined for the purposes of the Acts for the time being in force relating to the Government of India" there shall be substituted the words "British India or British Burma".

The Territorial Waters Jurisdiction Act, 1878.

(41 & 42 Vict. c. 73.)

In section seven, in the definition of "Governor" the words "or the Governor of any presidency" shall be omitted, and for the words "and where a British possession" there shall be substituted the words "and as respects a British possession which".

The Fugitive Offenders Act, 1881.

(44 & 45 Vict. c. 69.)

In section thirty-nine in the definition of "governor" the words "and includes the governor and lieutenant-governor of any part of India" shall be omitted.

The Colonial Prisoners Removal Act, 1884.

(47 & 48 Vict. c. 31.)

After section fourteen there shall be inserted the following sections:—

Application of Act "14A. (1) This Act in its application to British India shall to British India. have effect subject to the modifications specified in this section.

(2) In relation to persons removed or to be removed, or returned or to be returned, from or to British India to or from any part of His Majesty's dominions outside British India, British India shall be deemed to be one British possession and, in relation to that possession, any reference to the Government, to the Governor or to the Governor in Council and any reference to the Legislature shall be construed as a reference to the Governor-General or, as the case may be, to the Indian or Federal Legislature.

(3) In relation to persons removed or to be removed, or returned or to be returned, from or to one Province in British India to or from another Province in British India, each Province shall be deemed to be a separate British possession; any reference to the Government or to the Governor in Council and any reference to the Legislature shall, in relation to a Governor's Province, be construed as a reference to the Governor or, as the case may be, to the Provincial Legislature; and any reference to the Government, the Governor or the Governor in Council and any reference to the Legislature shall, in relation to a Chief Commissioner's Province, be construed as a reference to the Governor-General or, as the case may be, to the Indian or Federal Legislature.

Application of Act "14B. In the application of this Act to British Burma references to the Governor in Council shall be construed as references to the Governor."

In section eighteen—

(a) after the words "unless the context otherwise requires" there shall be inserted the words "and subject, as respects India, to the provisions of section fourteen A of this Act";

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- (b) in the definition of "British possession", the words "and any part of India under a Governor or Lieutenant-Governor shall be deemed to be one British possession" shall be omitted;
- (c) the definition of "India" shall be omitted;
- (d) in the definition of "legislature", the words "and in every part of India means the Governor General in Council" shall be omitted; and
- (e) in the definition of "Governor", the words "and includes the Governor-General of India and also the Governor and Lieutenant-Governor of any part of India" shall be omitted.

The Evidence by Commission Act, 1885
(48 & 49 Vict. c. 74.)

In sections two and three, after the word "India" there shall be inserted the word "Burma".

The Colonial Courts of Admiralty Act, 1890.
(53 & 54 Vict. c. 27.)

At the end of section four there shall be inserted the following paragraph:—
"This section shall not apply to Indian laws or Burma laws."

In proviso (a) to subsection (2) of section nine, for the words "or in any British possession" there shall be substituted the words "or in Burma or in any other British possession".

The Foreign Jurisdiction Act, 1890.
(53 & 54 Vict. c. 37.)

At the end of section fifteen there shall be inserted the words "and natives of any part of Burma which is not part of British Burma".

The Superannuation Act, 1892.
(55 & 56 Vict. c. 40.)

In subsection (3) of section one, after the words "revenue of India" there shall be inserted the words "or of Burma" and the words "in Council of India" shall be omitted.

In paragraph (c) of section four, after the words "of India" there shall be inserted the words "or of Burma", and at the end of the section there shall be inserted the following subsection:—

"(2) In this Act references to the revenue of India include references to the revenues of the Federation (and, before the establishment of the Federation, the revenues of the Governor-General in Council) and to the revenues of any Province in India".

The Regimental Debts Act, 1893.
(56 & 57 Vict. c. 5.)

In section sixteen, after the word "India" there shall be inserted the words "or Burma".

In section twenty-five, for the words "as if it were a colony" there shall be substituted the words "and to Burma as if they were colonies"; and at the end of the section there shall be added the words "or to any native of Burma within the meaning of Burma military law".

In section twenty-six, after the word "India" where it first occurs there shall be inserted the words "or Burma"; after the words "of the commander-in-chief in India" there shall be inserted the words "or of the general officer commanding the forces in Burma"; the words "or of any provincial Commander-in-Chief in India" shall be omitted and for the words "The Secretary to the Government of India in the Military Department" there shall be substituted the words "The Governor-General of India or, as the case may be, the Governor of Burma".

In section twenty-seven, for the words "the Indian military and orphan funds, or either of them" there shall be substituted the words "any officially recognised pension or provident fund".

Section twenty-eight shall be omitted.

In section twenty-nine, in the definition of "representation" after the word "India" in both places where it occurs there shall be inserted the word "Burma", and in the definition of "official administrator" the words "presidency or" shall be omitted, and after the word "province" there shall be inserted the words "and in Burma the Administrator-General of Burma."

The Trustee Act, 1893.
(56 & 57 Vict. c. 53.)

Until the Parliament of Northern Ireland makes other provision in that behalf, this Act shall, in its application to Northern Ireland, have effect as if:—

- (a) at the end of paragraph (d) of section one there were inserted the words "or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council under the provisions of Part XIII of the Government of India Act, 1935"; and
- (b) at the end of the said section there were inserted the words "(2) The dissolution of the Council of India shall not remove from the operation of this section any securities which were within the operation thereof immediately before the dissolution of that Council".

The Merchant Shipping Act, 1894.

(57 & 58 Vict. c. 60.)

In section ninety-nine, for the words "Indian Marine Service", in both places where they occur, there shall be substituted the words "Indian Navy".

In section one hundred and twenty-five, in subsection (1), after the words "of India" there shall be inserted the words "or Burma", and after the words "British India" there shall be inserted the words "or British Burma"; in subsection (2), for the words from "as the Governor-General" to the end of the subsection there shall be substituted the words "as the Governor-General of India or the Governor of Burma, according as the agreement is made in India or Burma, may direct"; in subsection (3) the words "in Council of India", wherever they occur, shall be omitted, and in subsection (4) after the word "India", wherever it occurs, there shall be inserted the words "or Burma".

In section one hundred and eighty-five, the words "in Council of India" wherever they occur, shall be omitted; in subsection (1), after the words "natives of India" there shall be inserted the words "or Burma"; in subsection (2), after the words "The part of India" there shall be inserted the words "or of Burma"; in subsection (3), the words "out of the revenues of India" shall be omitted, and at the end of the subsection there shall be inserted the words "but, so far as not recovered from the owner or master shall be a liability to be met out of the revenues of India or, as the case may be, of Burma", and in subsection (4) after the word "India" there shall be inserted the words "or Burma".

In section two hundred and seventy, after the words "British India" there shall be inserted the words "British Burma".

In sub-section (2) of section three hundred and sixty-eight, for the words "Governor-General of India in Council" there shall be substituted the words "legislature of India".

After section three hundred and sixty-eight there shall be inserted the following section:—

"368-A. (1) The provisions of the past preceding section shall apply in relation to British Burma as they apply in relation to British India with the substitution of references to British Burma for references to British India or India and of a reference to Burma law for the reference to Indian law.

(2) Any Act of the Indian Legislature which, as adapted or modified under the Government of Burma Act, 1935, is in force immediately after the commencement of that Act as part of the law of Burma shall, for the purposes of this section, be deemed to be an Act of the Legislature of Burma".

The Appellate Jurisdiction Act, 1908.

(8 Edw. 7, c. 51.)

In sub-section (1) of section two, for the words "any High Court in British India" there shall be substituted the words "the Federal Court in India, a High Court in British India or the High Court at Rangoon", and for subsection (3) of that section there shall be substituted the following subsection:—

"(3) In this section the expression 'High Court in British India' means a court which is a High Court for the purposes of the Government of India Act, 1935, and, as respects any period before the commencement of Part III of that Act, a court which was, or was recognised by Order in Council as being, a High Court in British India for the purposes of this section".

In the Schedule, after the words "British India" there shall be inserted the words "British Burma".

The Pensions (Governors of Dominions, etc.) Act, 1911.

(1 & 2 Geo. 5. c. 24.)

In subsection (1) of section twelve, after the words "of British India" there shall be inserted the words "and of British Burma".

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The British Nationality and Status of Aliens Act, 1914.
(4 & 5 Geo. 5. c. 17.)

In subsection (1) of section eight, after the words "British India" there shall be inserted the words "British Burma".

The Prize Courts Act, 1915.
(5 & 6 Geo. 5. c. 57.)

In section four, for the words "as respects any prize court in India except on the application of the Governor-General of India in Council" there shall be substituted the words "as respects any prize court in India, except on the application of the Governor of the Province in which the court has its principal seat or, as respects any prize court in Burma, except on the application of the Governor of Burma".

The Official Secrets Act, 1920.
(10 & 11 Geo. 5. c. 75.)

In proviso (a) to subsection (1) of section eleven, for the words "and India", there shall be substituted the words "India and Burma".

The Trusts (Scotland) Act, 1921.
(11 & 12 Geo. 5. c. 58.)

At the end of section ten there shall be inserted the following subsection:—

"(2) In this section the expression "the Indian Government" means the Secretary of State in Council of India, but the dissolution of the Council of India shall not remove from the operation of this section any stock, debentures, bonds or mortgages which were within the operation thereof immediately before the dissolution of that Council."

The Treaties of Washington Act, 1922.
(12 & 13 Geo. 5. c. 21.)

In subsection (1) of section five, after the word "India" there shall be inserted the word "Burma".

The Finance Act, 1923.
(13 & 14 Geo. 5. c. 14.)

In section nineteen, in subsection (2), after the words "British India" there shall be inserted the words "or British Burma", and in subsection (4) for the words "British India or for" there shall be substituted the words "India, Burma or".

The Trustee Act, 1925.
(15 & 16 Geo. 5. c. 19.)

At the end of section one, there shall be inserted the following subsection:—

"(3) The dissolution of the Council of India shall not remove from the operation of this section any debenture stock or other stock which was within the operation thereof immediately before the dissolution of that Council."

The Merchant Shipping (International Labour Conventions) Act, 1925.
(15 & 16 Geo. 5. c. 42.)

At the end of section five there shall be inserted the following subsection—

"(2) Notwithstanding the separation of India and Burma this Act shall continue to have effect as if Burma were still part of India."

Indian and Colonial Divorce Jurisdiction Act, 1926.
(16 & 17 Geo. 5. c. 40.)

In subsection (1) of section one, for the words "a High Court in India to which Part IX of the Government of India Act applies" there shall be substituted the words "a High Court in British India constituted by His Majesty by Letters Patent"; and for the words "where a court in India" there shall be substituted the words "where a court in British India".

In subsection (4) of section one, the words "in Council of India" shall be omitted.

In subsection (5) of section one, for the words "and India" there shall be substituted the words "India and Burma".

At the end of section one, there shall be inserted the following sections:—

Divorce Jurisdiction of High Court in Burma where parties are domiciled in England or Scotland. "1-A.—The provisions of section one of this Act shall apply in relation to Burma as they apply in relation to India, subject to the following modifications, that is to say—

(a) in subsection (1) of the said section, for the words "a High Court in British India constituted by His Majesty by Letters Patent" there shall be substituted the words "the High Court at Rangoon", and for the

- words "where a court in British India" there shall be substituted the words "where the court";
- (b) in the provisos to the said subsection, for the words "any such court", wherever those words occur, there shall be substituted the words "the court"; and for the words "no such court shall" there shall be substituted the words "the court shall not";
 - (c) in subsection (3) of the said section, for the words "the High Court in India by which the decree or order is made" there shall be substituted the words "the High Court at Rangoon" and for the words "by the High Court in India" there shall be substituted the words "by the High Court at Rangoon";
 - (d) in subsection (4) of the said section, for the words "a High Court in India" there shall be substituted the words "the High Court at Rangoon" and in paragraph (e) for the words "each High Court" there shall be substituted the words "the High Court";
 - (e) in subsection (5) of the said section, for the words "a High Court in India" there shall be substituted the words "the High Court at Rangoon";
 - (f) save as aforesaid, for the word "India" wherever it occurs in the said section (except in the phrase "India and Burma") there shall be substituted the word "Burma".

I.B.—(1) Any proceedings commenced under this Act before the separation of Burma from India may be continued, proceedings, rules etc. determined and appealed against in all respects as if Burma had continued to be part of India.

(2) The rules made under subsection (4) of section one of this Act which immediately before the separation of Burma from India were applicable to the High Court at Rangoon shall, until superseded by fresh rules, continue to apply to that court, and nominations made and approved under those rules shall continue to have effect."

In section two, for the words "the foregoing provisions of this Act" there shall be substituted the words "the provisions of section one of this Act".

In section three, after the words "in India" there shall be inserted the words "(including Burma and Aden)".

Indian Church Act, 1927.

(17 & 18 Geo. 5. c. 40.)

In section one, in the definition of "chaplain" for the words from "is appointed" to "a like chaplaincy" there shall be substituted the words—

"(i) is a chaplain to whom the provisions of section two hundred and sixty-nine of the Government of India Act, 1935, or the provisions of section one hundred and twenty-two of the Government of Burma Act, 1935, apply; or

(ii) is in the permanent service of the Crown and has been or is accepted by the Secretary of State in Council of India, or by the Secretary of State, as holding for the purposes of this Act a chaplaincy in India, Burma or Aden."

At the end of the said section there shall be inserted the following words and subsection—

"Any reference in this Act to the revenues of the Federation of India shall, as respects the period before the establishment of the Federation, be construed as a reference to the revenues of the Governor-General in Council.

Any reference in this Act to, or to any provisions of, an Indian Act shall be construed as a reference to that Act as for the time being in force in India, and, as respects any period after the separation of Burma and Aden from India, as including references to that Act or those provisions as for the time being in force in Burma and as for the time being in force in Aden, and, if any such Act or provisions have, whether in India, Burma or Aden, been repealed and re-enacted either with or without modifications, any reference thereto in this Act shall be construed as a reference to the re-enacted Act or provisions as in force in the country in question.

(2) Nothing in the Government of India Act, 1935 shall be construed as affecting the unity of the Indian Church as defined in this section or as excluding Burma or Aden from the operation of this Act."

In section three, after the words "church or burial ground" in the first two places where those words occur there shall be inserted the words "in India, Burma or Aden."

In section four, in subsection (1), the words "in Council", in both places where those words occur, shall be omitted, and after the words "whether consecrated or not" there shall be inserted the words "which are situate in India".

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After the said sub-section (1) there shall be inserted the following subsection—
“(1-A) If such a certificate as aforesaid is sent to the Governor-General of India he shall also forward a certified copy thereof to the Governor of Burma who shall cause it to be published in the official Gazette of Burma and thereupon shall be at liberty to resume complete control of all or any Maintained Churches or burial grounds, whether consecrated or not, which are situate in Burma, and the Indian Church and the officials and members thereof respectively shall cease to have any rights therein.”

In subsection (2), at the end of paragraph (i), there shall be inserted the words “or, as the case may be, of the Government of Burma”.

In subsection (3), for the words “the Governor-General of India in Council” there shall be substituted the words “Governor-General of India or, as the case may be, the Governor of Burma”; and at the end of the subsection there shall be inserted the following subsection—

“(3-A) The provisions of subsections (1-v), (2) and (3) of this section shall apply in relation to Aden as they apply in relation to Burma, with the substitution of the word ‘Aden’ for the word ‘Burma’ wherever that word occurs”.

In section five, for the words from “The Governor-General” to “Council of India” there shall be substituted the words “The Governor-General of India as respects India, the Governor of Burma as respects Burma, and the Governor of Aden as respects Aden, in each case with the sanction of the Secretary of State.”

In paragraph (ii) of the said section for the word “the revenues of India” there shall be substituted the words “the revenues of the Federation of India, the revenues of Burma or the revenues of Aden, as the case may be”.

In paragraph (x) of the said section for the words “the Governor-General of India in Council” there shall be substituted the words “Governor-General of India, the Governor of Burma, or the Governor of Aden”.

At the end of the said section there shall be inserted the following sub-section—

“(2) Any rules made under this section which immediately before the separation of Burma and Aden from India were applicable to Burma or Aden shall, until superseded by other rules, continue to apply with any necessary modifications to Burma or Aden, as the case may be”.

In section eight, at the end of subsection (2), there shall be inserted the following sub-section—

“(2-A) Notwithstanding anything in section one of this Act, section ninety-two of the Code of Civil Procedure as for the time being in force in India shall, for the purposes of this section, be deemed to be in force in Aden as part of the law of Aden, whether it is there in force for other purposes or not, and any appeal under this section from the decision of a court in Aden shall lie to, and be entertained by, the High Court at Bombay”.

Subsection (3) of the said section shall be omitted.

In section nine, in paragraph (i) for the words “the Secretary of State in Council of India” in both places in which they occur there shall be substituted the words “any competent authority”; in paragraphs (iii) and (iv) after “continuance” there shall be inserted the words “by the competent authority”; and in paragraph (iv) after the words “minister in India” there shall be inserted the words “Burma or Aden”.

Throughout the section for the words “the revenues of India” there shall be substituted the words “public revenues of India, Burma or Aden”.

The Easter Act, 1928.

(18 & 19 Geo. 5. c. 35.)

In part I of the Schedule, after the words “British India” there shall be inserted the words “British Burma”.

The Appellate Jurisdiction Act, 1929.

(19 & 20 Geo. 5. c. 8.)

For sub-section (2) of section one there shall be substituted the following subsection:—

“(2) A person shall be qualified under this section if he is a Privy Councillor, and

(a) is or has been a judge of the Federal Court in India, a High Court in British India or the High Court at Rangoon; or

(b) is a barrister, advocate or pleader of not less than fourteen years standing who practises, or has practised, in British India or British Burma.

In this sub-section the expression ‘High Court in British India’ means a court which is a High Court for the purposes of the Government of India Act, 1935, and, as respects any period before the commencement of Part III of that Act, a court

which was a High Court within the meaning of clause (24) of section three of an Act of the Indian Legislature known as the General Clauses Act, 1897."

In subsection (5), for the words "the revenues of India" there shall be substituted the words "the revenues of the Federation of India, the revenues of the Governor-General of India in Council or the revenues of Burma, as the case may be."

The Companies Act, 1929.

(19 & 20 Geo. 5. c. 23.)

In paragraph (h) of subsection (1) of section fifty-four, for the words "as amended by" there shall be substituted the words "as amended or adapted by or under".

The Import Duties Act, 1932.

(22 & 23 Geo. 5. c. 8.)

At the end of subsection (1) of section four there shall be inserted the following words:—

"This section shall apply also to Burma as respects goods imported after the thirty-first day of March, nineteen hundred and thirty-eight."

In subsection (1) of section twenty-one, in the definition of "the British Empire" after the word "India" there shall be inserted the words "and Burma".

The Isle of Man (Customs) Act, 1932.

(22 & 23 Geo. 5. c. 16.)

At the end of subsection (1) of section two there shall be inserted the following words:—

"This section shall apply also to Burma as respects goods imported after the thirty-first day of March, nineteen hundred and thirty-eight."

In paragraph (b) of section eleven, after the word "India" there shall be inserted the words "and Burma".

The Finance Act, 1933.

(23 & 24 Geo. 5. c. 19.)

At the end of paragraph (a) of subsection (1) of section fifteen there shall be inserted the words "(as adapted by any order in Council made under the Government of India Act, 1935)".

In paragraph 2 (d) of Schedule V. after the word "India" there shall be inserted the word "Burma".

The Isle of Man (Customs) Act, 1933.

(22 & 24 Geo. 5. c. 40.)

At the end of paragraph (a) of section eleven and at the end of paragraph (b) of subsection (2) of section twenty-one there shall be inserted the words "(as adapted by any Order in Council made under the Government of India Act, 1935)".

In paragraph 2 (d) of schedule IV, after the word "India" there shall be inserted the word "Burma".

The Whaling Industry (Regulation) Act, 1934.

(24 & 25 Geo. 5. c. 49.)

In subsection (1) of section fifteen, the words "or by the Indian Legislature" and the words "or, as the case may be, in British India" shall be omitted, and in subsection (1) of section seventeen, after the word "India" there shall be inserted the words "or Burma".

The Unemployment Insurance Act, 1935.

(25 & 26 Geo. 5. c. 8.)

In paragraph (d) of subsection (10) of section ninety-six, after the words "Indian forces" there shall be inserted the words "Burma forces".

The National Health Insurance Act, 1936.

(26 Geo. 5 & 1 Edw. 8. c. 32.)

In subsection (1) of section one hundred and twenty-nine, after the words "Indian Forces" there shall be inserted the words "of His Majesty's Burma Forces".

PART III.

The Army and Air Force Acts.

(a) *Adaptations of the Army Act and also of the Air Force Act.*

In section thirteen,—in paragraph (a) of subsection (1) after the word "India" there shall be inserted the word "Burma".

In section fifty-four,—in subsection (8), after the word "India" there shall be inserted the words "or Burma", and at the end of the subsection there shall be added the words "or, as the case may be, by the Governor of Burma"; and in subsection (9) after the words "the Governor-General" there shall be inserted the words "or, if he has been tried in Burma, by the Governor of Burma".

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In section fifty-nine, after the word "India", in both places where it occurs, there shall be inserted the word "Burma".

In section sixty, after the word "India", in both places where it occurs, there shall be inserted the words "or Burma".

In section sixty-four,—in sub-section (4) after the word "India", in the first three places where it occurs, there shall be inserted the word "Burma", and after the words "Governor General of India" there shall be inserted the words "the Governor of a Province in India, the Governor of Burma".

In section sixty-eight,—in paragraphs (f), (g) and (h) of sub-section (2) after the word "India" wherever it occurs, there shall be inserted the word "Burma".

In section ninety-four, after the word "India" where it first occurs, there shall be inserted the word "Burma", and after the words "in the Dominion; and" there shall be inserted the words "In Burma, any person duly authorised in that behalf by the Governor of Burma; and".

In section one hundred and twenty-two,—in sub-section (6) after the words "the Governor-General of India" there shall be inserted the words "the Governor of Burma".

In section one hundred and twenty-seven, the words "to the provisions of the Indian Evidence Act, 1872 or" shall be omitted, and after the word "legislature" there shall be inserted the words "or authority".

In section one hundred and thirty,—in subsection (5) for the words "presidency in which the person is confined" there shall be substituted the words "Province in which the person is confined and, in the case of a person confined in Burma, the Governor of Burma", and after the words "the United Kingdom, India", in both places where those words occur, there shall be inserted the word "Burma".

In section one hundred and thirty-two, after the words "in India for the Governor-General" in both places where those words occur, there shall be inserted the words "and in Burma for the Governor"; for "the words the Secretary of State or Governor-General" there shall be substituted the words "the Secretary of State, Governor-General or Governor," and for the words "The Secretary of State and Governor-General shall by rule" there shall be substituted the words "The Secretary of State, the Governor-General and the Governor of Burma shall by rules".

In section one hundred and thirty-four, after the word "India" in both places where that word occurs, there shall be inserted the words "or Burma".

In section one hundred and thirty-five, after the words "with the Governor-General of India" there shall be inserted the words "the Governor of any Province in India, the Governor of Burma"; for the words "or in such colony," there shall be substituted the words "Burma or that colony"; and after the words "from the Governor-General of India" there shall be inserted the words "the Governor of the Province, the Governor of Burma".

In section one hundred and thirty-six, for the words "passed by the Governor-General of India in Council" there shall be substituted the words "for the time being in force in India or Burma, being in the case of India a law of the Indian legislature."

In section one hundred and thirty-seven,—in paragraph (4) after the words "the Governor-General" there shall be inserted the words "or, in the case of officers serving in Burma, the Governor"; after the words "an officer serving in India" there shall be inserted the words "or Burma", and for the words "in Council" there shall be substituted the words "or, as the case may be, for Burma".

In section one hundred and forty-three,—in sub-section (1) for the words "the legislature or other authority in India or any colony, there shall be substituted the words "any legislature or other authority in India, Burma or a colony".

In section one hundred and fifty four,—in paragraph (5) after the word "India" there shall be inserted the words "or Burma", and in paragraph (7) after the word "India" there shall be inserted the word "Burma".

In section one hundred and fifty-six,—in sub-section (8) after the words "the Governor-General of India" there shall be inserted the words "or the Governor of Burma"; for the words "by any law or Ordinance to reduce" there shall be substituted the words "to provide for reducing"; and after the words "such Governor-General" there shall be inserted the word "Governor".

In section one hundred and sixty-two,—in sub-section (3) for the words "supreme court in India" there shall be substituted the words "High Court in India or Burma".

In section one hundred and sixty-three,—in paragraph (d) of sub-section (1) after the words "Governor-General of India" there shall be inserted the words "and, if in Burma, by some office under the Governor of Burma"; and in sub-section (2), after the word "India" there shall be inserted the words "or Burma".

In section one hundred and sixty-eight, after the word "India" there shall be inserted the word "Burma".

In section one hundred and sixty-nine, after the words "the Governor-General of India" there shall be inserted the words "and the Governor of Burma"; the words "by law" shall be omitted, and after the words "appear to the Governor-General" there shall be inserted the word "Governor".

In section one hundred and seventy,—in sub-section (3) for the words "supreme court in India" there shall be substituted the words "High Court in India or Burma" and after the words "such Indian" there shall be inserted the word "Burma".

In section one hundred and seventy-five,—in paragraph (4) for the words "and of India" there shall be substituted the words "India and Burma";

In paragraph (7) after the words "Governor General of India" there shall be inserted the words "or of the Governor of Burma"; and

In paragraph (12) after the word "India" in both places where it occurs, there shall be inserted the word "Burma".

In section one hundred and seventy-six,—in paragraph (3) for the words "and of India" there shall be substituted the words "India and Burma"; and

In paragraph (11) after the word "India" in both places where it occurs, there shall be inserted the word "Burma".

In section one hundred and seventy-seven, for the words "in India or in a colony" there shall be substituted the words "in India, Burma or a colony", and after the words "of India" wherever those words occur, there shall be inserted the word "Burma".

In section one hundred and eighty,—in sub-section (1) after the word "India" wherever it occurs, there shall be inserted the words "or Burma", and in sub-section (3) after the word "India" there shall be inserted the words "or Burma".

In section one hundred and eighty-one,—in subsection (1) after the word "India" there shall be inserted the word "Burma".

In section one hundred and ninety,—for paragraph (21) the following paragraphs shall be substituted:—

"(21) The expression 'British India' means all territories for the time being comprised within the Governors Provinces and the Chief Commissioners' Provinces, and the expression 'India' means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of any such an Indian Ruler, the tribal areas and any other territories which His Majesty in Council may from time to time after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India.

(21-a) The expression 'Burma' includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the first day of April, nineteen hundred and thirty-seven, comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam and any tribal areas connected with Assam, and the expression 'British Burma' means so much of Burma as belongs to His Majesty.

(21-b) The expressions 'tribal areas' and 'Ruler' have for the purposes of the foregoing definitions, the same meanings as they have in the Government of India Act, 1935";

in paragraph (23-a) after the words "of British India" there shall be inserted the words "of British Burma";

in paragraph (24) for the words "or India" there shall be substituted the words "India or Burma";

in paragraph (30) the words from the beginning to "chief court and" shall be omitted;

in paragraph (33) after the word "India" there shall be inserted the words "or Burma", and

in paragraph (35) after the word "India" there shall be inserted the word "Burma".

(b) *Adaptations of the Army Act.*

In section one hundred and seventy five,—in paragraph (7) after the words "native of India" there shall be inserted the words "or Burma" and after the word "to Indian military law" there shall be inserted the words "or, as the case may be, to Burma military law, but in either case"; and in paragraph (11) after the word "India" there shall be inserted the word "Burma".

In section one hundred and seventy-six,—in paragraph (8-a) after the word "India" there shall be inserted the word "Burma"; in paragraph (10) after the words "Indian military law" in the first place where those words occur there shall be inserted

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the words "or consisting partly of His Majesty's Burma forces subject to Burma military law"; after the words "natives of India" there shall be inserted the words "or as the case may be, natives of Burma", and at the end of the paragraph there shall be added the words "or, as the case may be, to Burma military law"

In section one hundred and eighty, for sub-section (2) the following sub-section shall be substituted:—

"(2) In the application of this Act to His Majesty's Indian forces and His Majesty's Burma forces (hereafter in this section referred to as the Indian forces and the Burma forces respectively) the following modifications shall be made:—

- (a) nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers belonging to or followers in the Indian forces, being natives of India, or the Burma military law respecting officers or soldiers belonging to or followers in the Burma forces, being natives of Burma, and on the trial of all offences committed by any such officer, soldier or follower reference shall be had to the Indian military law or, as the case may be, the Burma military law for such officers, soldiers or followers, and to the established usages of the service, but courts martial for such trials may be convened in pursuance of this Act;
- (b) Indian military law or, as the case may be, Burma military law shall extend to such officers, soldiers and followers as aforesaid wherever they are serving;
- (c) the Governor-General of India may suspend the proceedings of any court martial held in India on an officer or soldier belonging to the Indian forces or to the Burma forces, and the Governor of Burma may suspend the proceedings of any court martial held in Burma on any such officer or soldier;
- (d) an officer belonging to the Indian forces who thinks himself wronged by his commanding officer and on due application made to him does not receive the redress to which he considers himself entitled may complain to the Governor-General of India, who shall cause his complaint to be enquired into and if so desired by the officer shall make a report through the Secretary of State to His Majesty in order to receive the directions of His Majesty thereon;
- (e) a court martial or, where the case is dealt with summarily under the provisions of this Act, the authority having power so to deal with the case may sentence an officer belonging to the Indian forces to forfeit all or any part of his service for the purposes of promotion and, in addition, if the court or authority thinks fit, to be severely reprimanded or reprimanded;
- (f) the Governor-General of India in the case of the Indian forces, and the Governor of Burma in the case of the Burma forces, may reduce any warrant officer to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately before his appointment to be a warrant officer;
- (g) the provisions of this Act relating to warrant officers shall apply to hospital apprentices in India or Burma although not appointed by warrant;
- (h) Part II of this Act shall not apply to the Indian forces or the Burma forces, but persons may be enlisted and attested in India or Burma for medical service or for other special service in the Indian forces or the Burma forces for such periods, by such persons and in such manner as may be from time to time authorised by the Governor-General or the Governor of Burma"

In section one hundred and ninety,—in paragraph (8) for the words "and His Majesty's Indian forces" there shall be substituted the words "His Majesty's Indian forces and His Majesty's Burma forces".

For paragraph (22) there shall be substituted the following paragraph:—

"(22) The expressions 'native of India' and 'native of Burma' mean respectively a person triable and punishable under Indian military law or Burma military law."

(c) *Adaptations of the Air Force Act.*

In section one hundred and seventy-five,—in paragraph (11-A) after the words "in India" there shall be inserted the words "or Burma"; after the words "outside India" there shall be inserted the words "or, as the case may be, outside Burma", and after the words "of India" there shall be inserted the words "or, as the case may be, by the Air Council and the Governor of Burma".

In section one hundred and seventy-six,—in paragraph(8-b) after the words “in India” there shall be inserted the words “or Burma”; after the words “outside India” there shall be inserted the words “or, as the case may be, outside Burma”, and after the words “of India” there shall be inserted the words “or, as the case may be, by the Air Council and the Governor of Burma”.

In section one hundred and eighty-four B, after the words “in India” there shall be inserted the words “or Burma”, and after the words “of India” there shall be inserted the words “or, as the case may be, by the Air Council and the Governor of Burma”.

PART IV.

ENACTMENTS RELATING TO INDIAN RAILWAYS

The Indian Guaranteed Railways Act, 1879.

(42 & 43 Vict. c. 41.)

In section one, after the words “the Secretary of State for India in Council” (where those words first occur) there shall be inserted the words “the Federal Railway Authority or any Government in British India”; after those words in the second place where they occur, there shall be inserted the words “or any Government in British India”; the words and belonging to the Secretary of State for India in Council, or” and the words “belonging or” in both places where they occur shall be omitted; and at the end of the section there shall be added the following paragraphs—

“The term ‘the General Controlling Authority’ means, in relation to a Federal Railway, the Federal Railway Authority, in relation to a minor railway, the Provincial Government, and in relation to an Indian State Railway, the Governor-General acting in his discretion”;

The terms ‘Federal Railway’, ‘Indian State Railway’, ‘minor railway’ and ‘Federal Railway Authority’ have the meanings respectively assigned to them in the Government of India Act, 1935, except that, as respects the period before the establishment of the Federal Railway Authority, the term “Federal Railway Authority” means the Governor-General.

In section two, for the words “the Secretary of State for India in Council”, where they first occur, there shall be substituted the words “the Federal Railway Authority or any Government in British India”; for the words “with the sanction of the Secretary of State for India in Council” there shall be substituted the words “with the sanction of the General Controlling Authorities of all the railways concerned”.

In section three, for the words “the Secretary of State for India in Council” the words “the Secretary of State”, and “the Secretary of State in Council” wherever they occur there shall be substituted the words “the Governor-General”.

In section four, for the words “with the sanction of the Secretary of State for India in Council” there shall be substituted the words “with the sanction of the General Controlling Authority”; for the words “with the Secretary of State for India in Council” there shall be substituted the words “with the Federal Railway Authority or any Government in British India”; and for the words “by laws and regulations made by the Governor-General in Council” there shall be substituted the words “by or under the law in force in British India.”

Section five shall be omitted.

The East India Unclaimed Stock Act, 1885.

(48 & 49 Vict. c. 25.)

At the end of section twenty-two there shall be added the following paragraph:—

“The powers conferred by this section on the Secretary of State (including the power to make regulations) shall, after the coming into force of section one hundred and ninety-nine of the Government of India Act, 1935, instead of being exercised by the Secretary of State, be exercised in accordance with the provisions of that section.”

In section twenty-three for the words “the Secretary of State” there shall be substituted the words “the Governor-General”.

The Indian Railways Act, 1894.

(57 & 58 Vict. c. 12.)

In section two, after the words “the expression ‘the Secretary of State’ means” there shall be inserted the words “as respects the period before the commencement of Part III of the Government of India Act, 1935”.

Private Railway Acts.

Any power conferred by any Private Act on a Railway Company to make and carry out contracts with the Secretary of State in Council shall be deemed to include a power to make and carry out contracts with the Federal Railway Authority (as defined in the Indian Guaranteed Railways Act, 1879) or any Government in British India for the like purposes; references in any Private Act relating to railways in India to the

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Secretary of State in Council in relation to contracts or anything to be done in relation to contracts shall, where the context and the circumstances so admit or require, be construed as including references to that Authority or any such Government; any provision in any such Act requiring the previous sanction of the Secretary of State in Council to the payment of any portion of the remuneration of a director of a railway company as part of the working expenses of the company shall be construed as requiring the previous sanction of the Governor-General thereto; and any provision in any such Act vesting any property in the Secretary of State in Council shall be construed as having vested that property in His Majesty for the purposes of the Government of India.

General and Private Railway Acts.

So much of any enactment relating to railways in India, whether contained in a Public General Act or a Private Act, as directs the Secretary of State in Council to hold unclaimed moneys subject to the claims of persons entitled thereto or authorises him to apply such moneys as part of the revenues of India, or to apply them as part of the revenues of India or otherwise as he thinks fit, shall be construed as requiring the Secretary of State to treat such moneys (subject to any claims which may be established thereto in accordance with the relevant enactments) as part of the revenues of the Governor-General in Council or, after the establishment of the Federation of India, as part of the revenues of the Federation.

(27)
**THE GOVERNMENT OF INDIA (ADAPTATION OF
INDIAN LAWS) ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935 (hereafter in the recitals to this order referred to as "the Act") His Majesty is empowered by order in Council to provide that as from such date as may be specified in the order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act.

AND WHEREAS a draft of this order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:—

1. This order may be cited as "THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937," and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. (1) In this order the expression "Indian law" means a law as defined in section two hundred and ninety-three of the Act.

(2) The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

3. The Indian laws mentioned in the Schedules to this order shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by those Schedules to be made therein or, if it is so directed, shall cease to have effect.

4. (1) Whenever an expression mentioned in the first column of the table hereunder printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in a Central or Provincial Act or Regulation, whether an Act or Regulation mentioned in the Schedules to this order or not, then, unless that expression is by this order expressly directed to be otherwise adapted or modified, or to stand unmodified or to be omitted, there shall be substituted therefor the expression set opposite to it in column two of the said table.

Table of General Adaptations.

1.	2.
Governor-General of India in Council:	
Governor-General of India: Governor-General in Council: Governor-General: Government of India	Central Government.
Governor in Council: Governor (except in the expression "Governor's Province"): Lieutenant Governor in Council: Lieutenant Governor: Chief Commissioner (except in the expression "Chief Commissioner's Province"): Local Government. Local Administration.	Provincial Government.
Gazette of India: local official Gazette: local gazette: any other expression denoting a gazette in which official notices of a government are published, not being the gazette of a district or other sub-division of a Province.	Official Gazette.

Any reference to the Governor (or Lieutenant Governor) of a named Province in Council shall be treated for the purposes of this paragraph as if it were a reference to the Governor (or Lieutenant Governor) in Council of that Province.

(2) A direction in the Schedules to this order that a specified Indian law or section or portion of an Indian law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

5. (1) Where this order requires that in any specified Indian law, or in any section or other portion of an Indian law, certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law or, as the case may be, in that section or portion.

(2) Where this Order requires that in any Indian law a plural noun shall be substituted for a singular noun or vice versa, or a masculine noun for a neuter noun or vice versa, there shall be made also in any verb or pronoun in the sentence in question such consequential amendment as the rules of grammar may require.

6. (1) The following provisions shall have effect where any Indian law which under this Order is to be adapted or modified has before the commencement of this Order been amended, either generally or in relation to any particular area, by the insertion or omission of words, or the substitution of words for other words—

- (a) effect shall first be given in the amending law to any adaptation or modification required by paragraphs three and five of this order to be made therein;
- (b) the original law shall then be amended, either generally or, as the case may be, in its application to the particular area, so as to give effect to the directions contained in the amending law or, where any adaptation or modification has fallen to be made under sub-paragraph (a), in that law as so adapted or modified; and
- (c) all adaptations or modifications required by this order to be made in the original law shall then be made in that law as

so amended, except so far as in the case of any particular area they may be inapplicable.

(2) In this paragraph references to the amendment of a law by the insertion or omission of words or the substitution of words do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

7. Subject to the foregoing provisions of this order, any reference by whatever form of words in any Indian law in force immediately before the commencement of this order to an authority competent at the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part of British India shall, where a corresponding new authority has been constituted by or under any Part of the Government of India Act, 1935, for the time being in force, have effect until duly repealed or amended as if it were a reference to that new authority.

8. In any Indian law in force immediately before the commencement of this order any reference by name or description to any territory shall, unless the contrary intention appears or unless it has been, or is by this order, otherwise expressly provided, be construed as a reference to the territory which bore that name or answered to that description at the date when the enactment containing that name or description came into operation:

Provided that in the application of any enactment to Madras, Bombay, Bihar or the Central Provinces, references in that enactment to Madras, Bombay, Bihar or the Central Provinces, as the case may be, shall be construed as exclusive of so much of those Provinces respectively as was separated therefrom on the constitution of the Provinces of Orissa and Sind.

9. The provisions of this order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, byelaw, rule or regulation duly made or issued, or anything duly done, before the commencement of this order; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.

10. Save as provided by this order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislative or authority empowered to regulate the matter in question.

11. Nothing in this order shall affect the previous operation of, or anything duly done or suffered under, any Indian law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

12. For the avoidance of doubt it is hereby declared that—

(a) nothing in this Order transferring or assigning any functions to the Central Government shall be construed as excluding those functions from the operation of section one hundred and twenty-three or section one hundred and twenty-four of the Government of India Act, 1935;

- (b) the transfer by this order to a Provincial Government of any jurisdiction theretofore exercisable by the Local Government of the Province shall not be construed as excluding that jurisdiction from the operation of sub-section (2) of section two hundred and ninety-six of the said Act;
- (c) nothing in this order shall affect the provisions of any order in Council for the time being in force made under section one hundred and fifty-eight, section one hundred and fifty-nine or section one hundred and sixty of the said Act (which empower Orders to be made regulating the relations of India and Burma as to their monetary systems, relief from double taxation, customs, and ancillary and related matters), or under any corresponding provisions in the Government of Burma Act, 1935, and
- (d) no repeal effected by this order shall affect the operation of sub-paragraph (2) of paragraph fifteen of the Government of India (Commencement and Transitory Provisions) Order, 1936.

M. P. A. Hankey.

(Schedule Omitted.)

(28)

**THE GOVERNMENT OF BURMA (MISCELLANEOUS
FINANCIAL PROVISIONS) ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section one hundred and thirty-four of the Government of Burma Act, 1935 (hereafter in this Order referred to as "the Act"), His Majesty in Council is empowered, if he thinks it just so to do, to make provision for the payment to the revenues of the Federation or of the Governor-General of India in Council out of the revenues of Burma, and for the charging on the revenues of Burma, of such periodical or other sums as may appear to him to be proper:

AND WHEREAS by section sixty-eight of the Act, His Majesty in Council is empowered to require certain contributions and payments to be made to, and out of, the Federal Fund of the Federated Shan States, and to make such other provision (including provision with respect to borrowing) as he thinks fit with respect to the manner in which the said Fund is to be dealt with, but it will be impracticable for a considerable period after the commencement of the Act to determine what these contributions and payments should be:

AND WHEREAS it is provided by section seventy-seven of the Act that there shall be deemed to be owing by the Government of Burma to the Burma Railway Board such sum as may be declared by His Majesty in Council to represent the amount of certain existing railway funds attributable to the railways in Burma, but it is impracticable to ascertain the said amount with accuracy until after the commencement of the Act:

AND WHEREAS by section one hundred and fifty-six of the Act His Majesty in Council is empowered, for the purpose of facilitating the transition in Burma from the provisions of the Government of India Act to the provisions of the Act, to direct that the Act shall in Burma during a limited period have effect subject to adaptations and modifications, and to make other temporary provisions for the purpose of removing any difficulties arising in relation to the said transition:

AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of sub-section (1) of section one hundred and fifty-seven of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred by the said sections one hundred and thirty-four, sixty-eight and one hundred and fifty-six and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order and it is hereby ordered as follows:—

General.

1. This order may be cited as "THE GOVERNMENT OF BURMA (MISCELLANEOUS FINANCIAL PROVISIONS) ORDER, 1937"

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Payment to India for 1937-38.

3. (1) There shall, in the year commencing on the separation of Burma from India, be paid to the revenues of the Governor-General in Council out of the revenues of Burma the sum of 3,23,01,000 rupees, and the said sum shall be charged on the revenues of Burma.

(2) In subsequent years there shall be paid to the revenues of the Governor-General in Council or the Federation out of the revenues of Burma such sums as His Majesty in Council may hereafter determine.

Shan States Federal Fund.

4. (1) In this paragraph "the Fund" means "the Federal Fund of the Federated Shan States"; and "the States" means "the States comprised within the Federated Shan States".

(2) Subject to such adjustments as may be necessary to give effect to any Order in Council which may hereafter be made under section sixty-eight of the Act, there shall be made in the year beginning on the commencement of the Act and in the following year such contributions and payments—

(a) to the Fund out of the revenues of, or accruing in, the States;

(b) to the Fund out of the revenues of Burma; and

(c) out of the Fund to the revenues of Burma.

as the Governor in his discretion may direct; and any such contributions and payments shall be made at such times as the Governor in his discretion may direct.

(3) The Governor in his discretion may borrow for the purposes and on the security of the Fund within such limits as may from time to time be fixed by the Secretary of State, and there shall be paid out of the Fund such sums as are necessary to discharge any payments of principal or interest falling to be made in respect of any such borrowings and in respect of any borrowing of the Fund before the commencement of the Act from the revenues of India:

Provided that nothing in this sub-paragraph shall authorize any borrowing in sterling.

Existing Railway Funds.

5. Until a declaration is made by His Majesty in Council under sub-section (1) of section seventy-seven of the Act as to the sum which represents the amount of the existing Railway Funds attributable to the railways in Burma, the said section shall have effect as if the said sum were 3,74,44,000 rupees, and on His Majesty making such a declaration as aforesaid such adjustments shall be made in respect of any transactions under the said section before the making of the declaration as may be necessary to give effect to the declaration as from the commencement of the Act.

M. P. A. Hankey.

(29)

**THE INDIA AND BURMA TRADE (REGULATION)
ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section one hundred and sixty of the Government of India Act, 1935 (hereafter in this order referred to as "the India Act"), and section one hundred and thirty-five of the Government of Burma Act, 1935 (hereafter in this order referred to as "the Burma Act"), His Majesty is empowered, with a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, to give by order in Council such directions as he thinks fit for those purposes with respect to the duties which are, while the order is in force, to be levied on goods imported into or exported from India or Burma, and with respect to ancillary and related matters:

AND WHEREAS a draft of this order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the India Act and subsection (1) of section one hundred and fifty-seven of the Burma Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this order.

NOW, THEREFORE, His Majesty in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to order, and it is hereby ordered as follows:

PART I.

Introductory and General.

1. This order may be cited as "THE INDIA AND BURMA (TRADE REGULATION) ORDER, 1937.
2. The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.
3. In this order—
 - "duty" means a customs duty payable on importation or exportation, or a cess payable on exportation;
 - "import duty" means a duty payable on importation;
 - "separation" means the separation of India and Burma.
4. Any question arising under this order whether any goods have been produced or manufactured in any country shall be determined by the reference to the same tests as are at the date of separation applicable to the determination of similar questions for customs purposes in India.
5. In the event of any dispute between the Governor-General of India and the Governor of Burma as to the interpretation or application of

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any of the provisions of this order (including any dispute as to whether any consent, requisite under this order has been unreasonably withheld) the dispute shall be referred to the Secretary of State and his decision shall be final.

6. Any reference in this order to any Act shall, except so far as the contrary is expressly provided, be construed as a reference to that Act as for the time being in force in India or Burma, as the case may be.

7. This order shall come into force on separation and shall remain in force for three years or until twelve months have elapsed from the giving by the Governor-General of India to the Governor of Burma, or by the Governor of Burma to the Governor-General of India, of notice to terminate the operation thereof, whichever is the longer period.

PART II.

Provisions as to British India.

1. Except as otherwise provided in this order, no duties shall be leviable in British India on goods imported from, or exported to, Burma, in excess of the duties, if any, which are so leviable immediately before separation:

Provided that this paragraph shall not apply—

- (a) to opium, salt, salted fish or spirit; or
- (b) to goods brought into Burma from places outside British India and Burma and, without payment of duty in Burma, brought thence into British India; or
- (c) if Burma ceases to be a party to the International Tea Restriction Scheme as applicable to India, to tea.

2. Except as otherwise provided in this Order all goods imported from, or exported to, a customs port or customs aerodrome in Burma shall in British India be deemed for the purposes of the Sea Customs Act, 1878, to be goods imported from, or exported to, a customs port or customs aerodrome in British India.

3. No prohibitions or restrictions on import or export other than such as are specified in the Schedule to this Order shall have effect in British India with respect to the bringing of goods into British India from Burma or from British India into Burma.

4. (1) The duties levied in British India immediately before separation on goods imported into British India from places outside Burma and India, or exported from British India into places outside British India and Burma, may only be reduced or abolished with the previous consent of the Governor of Burma:

Provided that—

- (a) import duties on goods which at the date of separation are not produced or manufactured in Burma may be reduced or abolished if not less than two months before the reduction or abolition takes effect the Governor-General of India has given to the Governor of Burma notice of the intended reduction or abolition;
- (b) if under paragraph four of Part III of this Order the Governor of Burma has given notice to the Governor-General of India of the reduction or abolition in Burma of import duties on any goods which at the date of separation are not produced or manufactured in India, import duties on such goods may be reduced or abolished in British India.

(2) Any consent of the Governor-General of India required under paragraph four of Part III of this Order to the reduction or abolition of any duty in Burma shall not be unreasonably withheld.

5. (1) For the purposes of section three of the Indian Cotton Cess Act, 1925, and section three of the Indian Lac Cess Act, 1930, cotton, or lac (including refuse lac) produced in Burma shall in British India be deemed to have been produced in India.

(2) If at any time the cess leviable under either of the said Acts on any goods when exported from British India is higher than the cess leviable in Burma on similar goods when exported from Burma, a cess may be levied on those goods when exported from British India into Burma equal to the difference between the said cesses.

(3) If while this Order is in force a new cess is imposed in Burma on the exportation to countries outside India and Burma of any goods produced or manufactured in Burma, then, if any goods so manufactured or produced are without payment of the cess imported into British India, a cess of the same amount shall be levied in British India on the re-exportation of those goods to any country outside India and Burma.

6. If at any time the duty leviable on the importation into British India of any goods is higher than the duty leviable in Burma on such goods on importation into Burma, a duty may be levied in British India on the importation of those goods from Burma not exceeding the difference between the said duties.

7. If and so long as an excise duty is leviable in British India on any goods produced or manufactured therein, a countervailing import duty (not exceeding the excise duty) may be imposed on similar goods produced or manufactured in Burma:

Provided that—

- (a) any such countervailing duty on steel ingots or on articles manufactured therefrom, may be imposed at any rate not exceeding the appropriate rate of refund authorised by section seven of the Iron and Steel Duties Act, 1934; and
- (b) except in the case of goods mentioned in item forty of Part II of the Seventh Schedule to the India Act, no countervailing duty shall be leviable at a rate higher than that which will afford to goods produced or manufactured in Burma the same advantage as before separation over goods produced or manufactured outside Burma and India.

8. Notwithstanding anything in this Part of this Order any duties at any rate may be levied in British India on goods imported or exported by land from or to any country outside India and Burma:

Provided that in fixing those duties and in the administration of the land customs, due regard shall be had to the principles underlying this Order, and if the import of any class of goods by land otherwise than on payment of the duties leviable on similar goods imported by sea or air affects seriously, or is likely to affect seriously, the advantages enjoyed by Burma under this Order, such steps, if any, shall be taken for safeguarding the interests of Burma as the local conditions may permit.

9. The provisions of the Sea Customs Act, 1878, and of any rules for the time being in force thereunder relating to, and to goods imported or exported in, coasting vessels shall, notwithstanding separation, continue to apply in relation to, and to goods imported or ex-

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ported in, vessels plying between ports in India and ports in Burma, as they apply in relation to, and to goods imported or exported in, ships plying between ports in India.

10. The definitions of "home trade ships" and "coasting ships" in sections two and thirty-seven A of the Indian Merchant Shipping Act, 1923 and the provisions of section two hundred and eighteen of that Act (which confers exemptions from the provisions of that Act relating to load lines) shall, notwithstanding separation, have effect in British India as if no distinction existed between India and Burma.

11. (1) Nothing in this Part of this Order shall be construed as restricting in any way the exercise of any of the powers conferred by section twenty-three of the Sea Customs Act, 1878, or sections three, four and eleven of the Indian Tariff Act, 1934, but in exercising, or authorising the exercise of, any of those powers the Governor-General shall have due regard to the interests of Burma and to the principle underlying this Order, and, except where it appears to him impracticable or unnecessary so to do, shall previously consult the Governor of Burma.

(2) References in this paragraph to any enactment are references to that enactment as in force on the first day of January, nineteen hundred and thirty-seven.

PART III.

Provisions as to Burma.

1. Except as otherwise provided in this Order, no duties shall be leviable in Burma on goods imported from, or exported to, British India in excess of the duties, if any, which are so leviable immediately before separation:

Provided that this paragraph shall not apply—

- (a) to opium, salt, salted fish or spirit; or
- (b) to goods brought into British India from places outside British India and Burma and, without payment of duty in British India, brought thence into Burma; or
- (c) if Burma ceases to be a party to the International Tea Restriction Scheme as applicable to India, to tea.

2. Except as otherwise provided in this Order, all goods imported from or exported to, a customs port or customs aerodrome in British India shall in Burma be deemed for the purposes of the Sea Customs Act, 1878, to be goods imported from, or exported to, a customs port or customs aerodrome in Burma.

3. No prohibitions or restrictions on import or export other than such as are specified in the Schedule to this Order shall have effect in Burma with respect to the bringing of goods into Burma from British India or from Burma into British India.

4. (1) The duties levied in Burma immediately before separation on goods imported into Burma from places outside Burma and British India, or exported from Burma into places outside Burma and British India, may only be reduced or abolished with the previous consent of the Governor-General of India:

Provided that—

- (a) import duties on goods which at the date of separation are not produced or manufactured in India may be reduced or abolished if not less than two months before the reduction or abolition takes effect the Governor of Burma has given

to the Governor-General of India notice of the intended reduction or abolition;

- (b) if under paragraph four of Part II of this Order the Governor-General of India has given notice to the Governor of Burma of the reduction or abolition in British India of import duties on any goods which at the date of separation are not produced or manufactured in Burma, import duties on such goods may be reduced or abolished in Burma.

(2) Any consent of the Governor of Burma required under paragraph four of Part II of this Order to the reduction or abolition of any duty in British India shall not be unreasonably withheld.

5. (1) For the purposes of section three of the Indian Cotton Cess Act, 1923, and section three of the Indian Lac Cess Act, 1930, cotton or lac (including refuse lac) produced in British India shall in Burma be deemed to have been produced in Burma.

(2) If at any time the cess leviable under either of the said Acts on any goods when exported from Burma is higher than the cess leviable in British India on similar goods when exported from British India, cess may be levied on those goods when exported from Burma into British India equal to the difference between the said cesses.

(3) If while this Order is in force a new cess is imposed in British India on the exportation to countries outside India and Burma of any goods produced or manufactured in British India, then, if any goods so manufactured or produced are without payment of the cess imported into Burma, a cess of the same amount shall be levied in Burma on the re-exportation of those goods to any country outside India and Burma.

6. If at any time the duty leviable on the importation into Burma of any goods is higher than the customs duty leviable in British India on such goods on importation into British India, a duty may be levied in Burma on the importation of those goods from British India not exceeding the difference between the said duties.

7. If and so long as an excise duty is leviable in Burma on any goods produced or manufactured therein, a countervailing import duty (not exceeding the excise duty) may be imposed on similar goods produced or manufactured in British India:

Provided that—

- (a) any such countervailing duty on steel ingots, or on articles manufactured therefrom, may be imposed at any rate not exceeding the appropriate rate of refund authorised by section seven of the Iron and Steel Duties Act, 1934; and
- (b) except in the case of goods mentioned in item forty of Part II of the Seventh Schedule to the India Act, no countervailing duty shall be leviable at a rate higher than that which will afford to goods produced or manufactured in British India the same advantage as before separation over goods produced or manufactured outside India and Burma.

8. A duty may be imposed in Burma on rice exported to India not exceeding that imposed on rice exported to other countries.

9. (1) If at any time a limit is imposed on the quantity of Japanese cotton piece goods that may be imported into India, the Governor of Burma shall also by notification impose a limit on the quantity of such goods that may be imported into Burma.

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(2) The said limit shall be such as to secure that the quantity of Japanese cotton piece goods imported into Burma from places outside India in each year does not exceed the total quantity of such goods imported into Burma from places outside India during the financial year commencing on the first day of April, nineteen hundred and thirty-four.

(3) Subject as aforesaid, the notification may impose separate limits with respect to particular classes of such goods.

10. Notwithstanding anything in this Part of this Order, any duties at any rate may be levied in Burma on goods imported or exported by land from or to any country outside India and Burma :

Provided that in fixing those duties and in the administration of the land customs, due regard shall be had to the principles underlying this order, and if the import of any class of goods by land otherwise than on payment of the duties leviable on similar goods imported by sea or air affects seriously, or is likely to affect seriously, the advantages enjoyed by British India under this order, such steps if any shall be taken for safeguarding the interest of British India as the local conditions may permit.

11. The provisions of the Sea Customs Act, 1878, and of any rules for the lime being in force thereunder relating to, and to goods imported or exported in, coasting vessels shall, notwithstanding separation, continue to apply in relation to, and to goods imported or exported in, vessels plying between ports in India and ports in Burma as they apply in relation to, and to goods imported or exported in ships plying between ports in Burma.

12. The definitions of "home trade ships", and "coasting ships" in sections two and thirty-seven A in the Indian Merchant Shipping Act, 1923, and the provisions of section two hundred and eighteen of that Act (which confers exemption from the provisions of that Act relating to load lines) shall have effect as if no distinction existed between India and Burma.

13. (1) Nothing in this part of this order shall be construed as restricting in any way the exercise of any of the powers conferred by section twenty-three of the Sea Customs Act, 1878, or sections three, four and eleven of the Indian Tariff Act, 1934, but in exercising, or authorising the exercise of, any of those powers the Governor shall have due regard to the interests of British India and to the principles underlying this order, and, except where it appears to him impracticable or unnecessary so to do, shall previously consult the Governor-General of India.

(2) References in this paragraph to any enactment are references to that enactment as in force on the first day of January, nineteen hundred and thirty-seven, subject however, to any adaptations made therein under section one hundred and forty-nine of the Burma Act.

14. (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States certifies with respect to any Indian State that the provisions of Part II of this order will, with any necessary adaptations and modifications, be applied, so far as is reasonably practicable, in and in relation to that State as they are applied in and in relation to British India, then, unless and until the certificate is revoked by His Majesty's said Representative, the provisions of this Part of this order shall have effect as if references to British India were references to British India and that State.

(2) A certificate for the purposes of this paragraph may be given before separation by the Governor-General of India.

M. P. A. Hankey.

SCHEDULE.

Permissible Prohibitions and Restrictions.

1. Prohibitions or restrictions imposed for the purposes of public security.
2. Prohibitions or restrictions imposed on moral or humanitarian grounds.
3. Prohibitions or restrictions regarding traffic in arms, ammunition and implements of war and in exceptional circumstances, prohibitions or restrictions on other military supplies.
4. Prohibitions or restrictions imposed for the protection of public health or for the protection of animals or plants against disease, insects or harmful parasites.
5. Export prohibitions or restrictions imposed for the protection of national treasures of artistic, historic, or archaeological value.
6. Prohibitions or restrictions designed to extend to goods produced or manufactured in countries other than India or Burma the regime established within British India, or, as the case may be, Burma, in respect of the production of, trade in, and transport and consumption of, native products of the same kind.
7. Prohibitions or restrictions arising out of any obligation which India or Burma may have undertaken by virtue of its adherence to any scheme for restricting the production or export of tea, rubber or any other commodity.

(30)

**THE GOVERNMENT OF BURMA (IMMIGRATION)
ORDER, 1937.**

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section one hundred and thirty-eight of the Government of Burma Act, 1935, His Majesty is empowered by Order in Council to direct that during such period as may be specified in the Order, immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of that Act between the Governor of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or, in default of agreement, as may have been prescribed by the Secretary of State) and no other restrictions:

AND WHEREAS the restrictions specified in this Order have been mutually agreed upon between the Governor-General of India in Council and the Governor of Burma in Council and approved by the Secretary of State:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section one hundred and fifty-seven of the said Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in exercise of the said powers and of all other powers enabling him in that behalf is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

1. This Order may be cited as the "GOVERNMENT OF BURMA (IMMIGRATION) ORDER, 1937."

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. During the period mentioned in the next succeeding paragraph, immigration into Burma from India shall be subject to the restrictions in force immediately before the commencement of the Government of Burma Act, 1935, and no other restrictions.

4. The period mentioned in the last preceding paragraph shall commence on the separation of Burma from India and continue for three years or until twelve months have elapsed from the giving by the Governor of Burma to the Governor-General of India of notice to terminate the operation of this Order, whichever is longer period:

Provided that if any restrictions are imposed in British India on immigration into India from Burma (other than restrictions in force immediately before the separation of Burma from India) the said period shall cease and any dispute as to whether any such restrictions have been imposed shall be referred to the Secretary of State, whose decision shall be final.

5. For the purposes of this Order—

- (a) the exclusion of undesirable individuals;
- (b) the imposition of regulations of general application in the interests of public health or public safety;
- (c) the taking by the Governor-General of India or the Governor of Burma of any action which he may consider necessary for the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or as the case may be, Burma or any part thereof,

shall not be deemed to be the imposition of a restriction on immigration.

M. P. A. Hankey.

(31)

**THE INDIA, BURMA AND ADEN (TRANSITORY
PROVISIONS) (TAXATION) ORDER, 1937.**
AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section three hundred and ten of the Government of India Act, 1935 (hereafter in this Order referred to as "the India Act"), and by section one hundred and fifty-six of the Government of Burma Act, 1935 (hereafter in this Order referred to as "the Burma Act"), His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act, to make temporary provision for the purpose of removing any difficulties arising in relation to the said transition:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the India Act and subsection (1) of section one hundred and fifty-seven of the Burma Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order;

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "THE INDIA, BURMA AND ADEN (TRANSITORY PROVISIONS) (TAXATION) ORDER, 1937".

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. In this Order—

"separation" means the separation of Burma and Aden from India;

"the three countries" means India, Burma and Aden;

"Central taxation" means all taxes, duties, charges, fines and penalties payable or about to become payable under, or in accordance with the provisions of, the Acts specified in the Schedule to this Order:

"outstanding Central taxation" means Central taxation which had become payable before separation, or which could have become payable before separation if the existence and extent of the liability had been determined in time.

4. (1) Separation shall not affect—

(a) the amount payable by any person in respect of outstanding Central taxation;

- - -

- (b) the amounts to be allowed, by way of drawback, refund, rebate, or credit in assessment, to any person in respect of Central taxation paid, or treated as paid, before separation, or in respect of deposits made before separation as security for payment of Central taxation, or in respect of outstanding Central taxation paid after separation.

(2) The said amounts shall remain or become payable, or, as the case may be, be allowed, in the same places as if separation had not taken place, and the enactments relating to the assessment, demand and recovery of Central taxation shall, throughout the three countries, continue to apply, as nearly as may be, in relation to those amounts as if there had been no separation:

Provided that any amount paid or allowed after separation shall be paid or allowed for the benefit or at the expense of the Government of that one of those countries in which the place in which the amount first became payable or was allowed is situated, and where any amount which became payable in one of the three countries is recovered in another, any necessary adjustments shall be made between the revenues of those countries accordingly.

5. After separation the same consequences shall flow in each of the three countries from the stamping outside that country of any document executed before separation, as would have flowed therefrom if there had been no separation.

M. P. A. Hankey.

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